UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026

- -x

In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.

f/k/a GENERAL MOTORS CORPORATION, et al.

Debtors.

- -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

April 29, 2010

9:52 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

Hearing on Fee Applications

Fee Examiner's Motion for Adjournment of Hearing on Second Interim Fee Applications

Second Fee Application Hearing

Fee Examiner's Motion for Clarification of Appointment Order

Status Conference re: Amending the Terms of their Engagement with Brownfield Partners, LLC

Motion for Relief from Stay filed by Lisa Gross

Motion of Debtors for Entry of Order Pursuant to 11 U.S.C. Section 105(a) and General Order M-390 Authorizing Implementation of Alternative Dispute Resolution Procedures, Including Mandatory Mediation

Debtors' Objection to Proof of Claim No. 65796 Filed by Rudolph V. Towns

Application of the Official Committee of Unsecured Creditors of Motors Liquidation Company for Entry of an Order Authorizing

the Employment and Retention of Bates White, LLC as the Committee's Consultant on the Valuation of Asbestos Liabilities nunc pro tunc to March 16, 2010

Hearing on Objection to Application to Employ Stuart Maue as Consultant Fee Examiner's Application to Authorize the Limited Retention and Employment of the Stuart Maue Firm as Consultant to the Fee Examiner

Transcribed by: Dena Page

A P P E A R A N C E S :

WEIL, GOTSHAL & MANGES LLP
Attorneys for Debtor
767 Fifth Avenue
New York, NY 10153

BY: STEPHEN KAROTKIN, ESQ.
JOSEPH H. SMOLINSKY, ESQ.

JENNER & BLOCK LLP
Attorneys for Motors Liquidation Co.
919 Third Avenue
37th Floor
New York, NY 10022

BY: PATRICK J. TROSTLE, ESQ.

GODFREY & KAHN, S.C.
Attorneys for the Fee Examiner
One East Main Street
Suite 500
Madison, WI 53701

BY: BRADY C. WILLIAMSON, ESQ.
KATHERINE STADLER, ESQ.
CARLA O. ANDRES, ESQ.
TIMOTHY F. NIXON, ESQ.

BAKER & MCKENZIE
130 East Randolph Drive
Suite 3900
Chicago, IL 60601

BY: ANDREW MCDERMOTT, ESQ. (TELEPHONICALLY)

BRYAN CAVE LLP
Attorneys for Evercore Group, LLC
211 North Broadway
Suite 3600
St. Louis, MO 63102

BY: BRIAN C. WALSH, ESQ.

BUTZEL LONG
380 Madison Avenue
22nd Floor
New York, NY 10017

BY: BARRY N. SEIDEL, ESQ.

CAPLIN & DRYSDALE
375 Park Avenue
35th Floor
New York, NY 10152

BY: RITA C. TOBIN, ESQ.

GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166

BY: MATT J. WILLIAMS, ESQ.

KRAMER LEVIN NAFTALIS & FRANKEL LLP
Attorneys for the Unsecured Creditors' Committee
1177 Avenue of the Americas
New York, NY 10036

BY: THOMAS MOERS MAYER, ESQ.

HONIGMAN MILLER SCHWARTZ AND COHN LLP
2290 First National Building
660 Woodward Avenue
Detroit, MI 48226

BY: ROBERT B. WEISS, ESQ.

MCCARTER & ENGLISH, LLP
Attorneys to Brownfield Partners
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102

BY: JEFF T. TESTA, ESQ. (TELEPHONICALLY)

U.S. DEPARTMENT OF JUSTICE, OFFICE OF THE UNITED STATES TRUSTEE
Attorneys for Trustee
33 Whitehall Street
21st Floor
New York, NY 10004

BY: ANDREW D. VELEZ-RIVERA, ESQ.
LINDA A. RIFFKIN, ESQ.

ALSO PRESENT:
DOUGLAS DEEMS, The Claro Group (TELEPHONICALLY)
MICHAEL EISENBAND, CPA, FTI Consulting
MAUREEN F. LEARY, New York State Department of Law
(TELEPHONICALLY)

STUART MINER, Brownfield Partners (TELEPHONICALLY)

JAKE RODD, In Pro Per/Pro Se (TELEPHONICALLY)

P R O C E E D I N G S

THE COURT: All right, we're here on GM. Believe it or not, I've read all of this stuff. We have a very busy day today, a very long day. What I want to do is deal with any uncontested matters first because dealing with the fee-related matters and the fee examiner's related motions is going to take a lot of time. Then I want to deal with the Lisa Gross motion, and then we'll deal with the fee apps, the Maue firm retention, the motion for clarification, and the request for an adjournment, in that order.

Is there a need to deal with uncontested motions either by asking me to approve them in a more formal way or to confirm deals on the record? Mr. Mayer, good morning.

MR. MAYER: Good morning, Your Honor. Tom Mayer of Kramer Levin for the unsecured creditors' committee. Your Honor, the committee moved to retain an asbestos expert by the name of Bates White. There are no objections, and the order has been presented to your chambers. We would ask that you sign it.

THE COURT: Granted.

MR. MAYER: Thank you.

THE COURT: Mr. Smolinsky, you want to come up, please? Since I sense that a lot of people are on the phone for anything longer than what Mr. Mayer said, I'd like the main lectern to be used.

MR. SMOLINSKY: Good morning, Your Honor. Joe Smolinsky, Weil, Gotshal & Manges for the debtor. Your Honor, there are a few uncontested matters such as debtors' twelfth omnibus objection to claims where there was no objection filed and I think Your Honor can just enter the order, if you're inclined to do so. There are a couple of uncontested matters which I may just want to spend a minute on because there might be some people on the phone that may have statements.

THE COURT: Sure.

MR. SMOLINSKY: Your Honor, on the uncontested matters, item number (sic) C is the debtors' motion for entry of an alternative dispute resolution procedure. You'll recall, Your Honor, last time we were in court, we reviewed the objections and we carved out certain classes of claims from the ADR procedures, in order to resolve the various objections. Since that time, we've gone back, we've spoken to the parties, and we again want to delete certain classes of claims from the ADR procedures without prejudice to coming back with a separate motion. And Your Honor, we have a supplement order which withdraws the motion with respect to certain classes of claims that include asbestos-related claims, environmental claims, tax claims excluding taxings that -- indemnity claims, and patent infringement claims. So we've prepared a supplemental order for Your Honor which would fully dispose of the motion which would allow us to resolve through the ADR procedures all types

of litigation claims other than these. I don't believe there are any objections to the procedures, but given -- I looked at the call roster; there might be some people who may want to say something.

THE COURT: All right, does anybody on the phone want to be heard with respect to that?

Record will reflect no response, Mr. Smolinsky, and your motion's approved.

MR. SMOLINSKY: Thank you, Your Honor. The only other uncontested matter which we might want to spend a minute on is the debtors' objection to proof of claim 65796, filed by Rudolph Towns. I don't know if Your Honor wants to hear or if Mr. Towns is on the phone, we should make sure that his rights are protected. I did want to note that we served the copy of this motion on Mr. Towns, on Janice Jennings (ph.), who is Mr. Towns' former counsel who actually mechanically filed the proof of claim, Mr. Towns' daughter --

THE COURT: How many billion dollars was this claim for?

MR. SMOLINSKY: Eighty-six billion dollars, Your Honor.

THE COURT: I beg your pardon?

MR. SMOLINSKY: Eighty-six billion dollars.

THE COURT: Um-hum.

MR. SMOLINSKY: And we did confirm that it was

intended to be billions and not million.

So we served Tamara Slaughter-May (ph.), his daughter, and we also served Yolanda Nicholson (ph.), who is a family advisor. We haven't received any objections. I'm happy to take Your Honor through the facts, but unless there's an objection, we'd ask that Your Honor enter the order.

THE COURT: Is Mr. Towns on the phone? Do you wish to be heard?

All right, I'm going to grant the estate's motion to expunge, both because it is unopposed and because the debtors are plainly right. Normally, I wouldn't do this, but on a claim of eighty-six billion dollars, I'll just note that as the estate has properly observed, Mr. Towns hasn't provided any legal or factual support his alleged intrinsic fraud injuries, civil reco, or anything else.

You can submit an order in accordance with that, Mr. Smolinsky, at your earliest convenience.

MR. SMOLINSKY: Thank you, Your Honor. I think the balance of the uncontested matters can be dealt with on submission, which brings us, I believe, to the Lisa Gross motions, which I think was next on your agenda.

THE COURT: Yes. Ms. Gross, are you on the phone? Ms. Gross? Am I correct, Mr. Smolinsky, that the estate had agreed that it would pick up the tab for her to appear on the phone if she wanted to appear on this?

MR. SMOLINSKY: That's correct, Your Honor. And we did provide her with the phone number.

THE COURT: Okay. I do have papers on it, so therefore, I'm not going to default Ms. Gross on the motion, but I have a tentative, based on my homework before the hearing, and without her supplementing her submission in any oral argument, I'm going to make my findings on that.

For the record, her motion for a waiver of the filing fee to file her motion is granted, and I'm also granting her request that I not make her serve the entire creditor community in the case. But on the merits, I find that the debtors are right that New GM assumed the obligations, if any, or liabilities, if any, for which she is seeking recovery, and therefore, there is no need for her to file a claim against the Old GM estate. And that she doesn't need relief from the stay to proceed against the party that's the real party-in-interest, which is New GM. Moreover, there has been a failure to address, much less satisfy, the Sonnax factors applicable in this circuit, for relief from the stay to proceed with a litigation elsewhere, in the Tenth Circuit or elsewhere, and accordingly, the motion for relief from the stay is denied.

Mr. Smolinsky, have one of your folks settle an order in accordance with the foregoing at your earliest convenience.

MR. SMOLINSKY: At the risk of picking the right address, Your Honor, because she has moved around quite a bit,

we'll do our best to reach her by phone, as well.

THE COURT: Good. And of course, you'll be electronically filing the notice of settlement as well.

MR. SMOLINSKY: Yes.

THE COURT: Okay.

MR. SMOLINSKY: Thank you, Your Honor. I think that leaves the fee issues.

THE COURT: Okay. Then we're going to deal with the fee issues next, and there are some particular matters that I'm going to want to address, and let me take a motion (sic) to give you my thoughts as to how we need to handle it.

When you make your presentations, make them as you see fit, but I want you to address the following questions and concerns. First of all, as a matter of procedure, I'm going to want to hear from the applicants, starting with Weil. Then I'm going to give the fee examiner or his counsel the opportunity to respond, professionals to reply, and the examiner -- fee examiner the chance to surreply. Mr. Velez-Rivera, I see you're here on behalf of the U.S. Trustee's Office, and I'll want you to -- I think you fit in best right after I hear from the fee examiner, and I'm going to give you the same surreply rights, as well.

I want both sides to address how I find that fair point between ensuring that the estate isn't ripped off on the one hand and being fair to people who did more work in less

time than I've seen in thirty-seven years in working on bankruptcy matters. There is a strong public interest in ensuring fairness to the estate, but there is an equal interest in fairness to people who did the work. And for the most part, I thought the fee examiner was sensitive to those concerns. And for that reason, my tentative, subject to people's rights to be heard, is to approve in material part specific articulated concerns with respect to identified matters. But I have reservations objections to fees that may be said to drift away from the underpinnings in the Code and case law for adjustments to requested fees, most significantly in what seemed to be some mechanical percentage reductions in fees for which I'll want both sides, but especially counsel for the fee examiner to address.

I don't need to tell you all that over the years -- I did it in the big decision in this case -- I start with textual analysis; I then go to case law. So help me in that regard, folks.

Now, aside from that, I don't need help and I don't want to spend even more time and money discussing the law of compensation in Chapter 11 cases. I saw that second -- I forgot what it was called -- report by the fee examiner. I must say that I raised my eyebrows when I saw it. I don't need something like that to know the law in this area. I don't think any judge in this district does and I have material

doubts as to whether most of the judges need that. I assume that there will be a request to be compensated for that, and we'll deal with that in an appropriate time, but I certainly don't need it for today's hearing.

If people want to be excused from guidelines applicable in this court or under the U.S. Trustee Program guidelines, I'll need help as to why I should do that. I think the starting point for my analysis, subject to people's rights to be heard, is that especially for members who practice regularly in the bankruptcy community, compliance is expected. However, I'll hear argument on how I should deal with failures to comply and whether penalties or bases for cutting fees for failures to comply might be excessive under the circumstances. I'll also want to hear people's views as to what's right for people who don't practice regularly in the bankruptcy courts or provide services to debtors or have to file fee apps, since as environmental consultants, because while I'm not of a mind, subject to people's rights to be heard, to provide get-out-of-jail-free cards for failures to comply, I do need to exercise judicial judgment in terms of what's a fair remedy or sanction or penalty or whatever the appropriate word should be for any failures to comply.

With that, let's get to work. Mr. Karotkin, are you going to take the lead for the estate -- or, excuse me, for your firm, Weil?

Now, by the way, because I lived with you so much over six weeks, I know many of you. I don't know everybody. Excuse me for knowing some but not everyone. In any event, whether I know you or not, please identify yourself on the record before you speak.

MR. KAROTKIN: Thank you, sir. Stephen Karotkin, Weil, Gotshal & Manges, counsel for the debtors, for our firm, Weil, Gotshal, with respect to our first interim fee application. Your Honor, I think you put your finger on it, as you usually do, with respect to the issues pertinent to our fee application. As you recognize, and as totally mystified us, I must say, the fee examiner's response to our fee application, and in particular, the request for a five percent discount in connection with the work we did during the first interim fee application period, in light of, Your Honor, what the fee examiner stated himself in his response, basically echoing what we submitted in our fee application, Your Honor, as to the Herculean -- and that's a quote -- effort involved, and that our firm -- and again, quoting from Mr. Williamson -- billed significant fees because extraordinary circumstances required us to do so. I think as Your Honor is well aware because, again, Your Honor, you lived with it, you lived with it with us during the initial period of this case, nobody can question the results achieved, the value enhanced, the value preserved for the benefit of the U.S. economy. And you referred to that, as

we noted in our pleadings, several times in your opinion approving the 363 transaction. I don't think we have to remind anybody of the gravity of this situation which was confronted at the inception of these cases, the systemic risks to the U.S. economy and perhaps, Your Honor, again, as you noted, to the world economy we all faced at that time. Again, you were there and you addressed that in your opinion.

And in light of that, not only, again, were we totally mystified as to how the fee examiner could suggest a five percent discount because there is no basis for it, and to address what Your Honor raised earlier, Mr. Williamson, who was involved with the Bankruptcy Review Commission in 1970 -- I guess 1976 or prior to 1979, should know better than anyone that the concept of the statute is that attorneys involved in bankruptcy matters should be compensated at their normal rates, and a discount is not appropriate. We don't believe there's any basis for a discount, and we would request that, basically, what is a gratuitous request for a discount should be denied.

He notes that -- I think subsequent, he filed a separate pleading later, I think, on Monday with respect to all of the fee applications where he noted that -- I think his words were something like our rates are higher than market. Of course, that's not the case, certainly in New York. He has no evidence that he presented or facts he presented to support that. And I think he also said that it's appropriate for a

discount to reflect the risks associated in collecting fees in a Chapter 11 case, basically suggesting, Your Honor, that firms inflate their charges because of the risk of payment in a Chapter 11 case. That's certainly not the case here, and again, there's no basis for the discount. The other items --

THE COURT: Pause, please, Mr. Karotkin, because there is or at least at one time was a practice in firms where their bankruptcy lawyers would bill at a higher rate than comparable lawyers in other departments in their same firms would, or at least those who would be subject -- I don't think it was limited to those who would be subject to fee apps. Your firm's rates are the same across the board?

MR. KAROTKIN: They're the same in connection with these matters across the board.

THE COURT: Continue.

MR. KAROTKIN: Your Honor, to basically go back to the other response or the other issues that Mr. Williamson raised with respect to our fee application, there were, basically, four items. And then, in addition to that, we have the one item raised by the U.S. trustee, which again, Mr. Williamson, although not raising it in his initial pleading, on Monday, he raised the same issue as to there ought to be a continuing ten percent holdback. So, the remaining issues as to our application, and I will note that 80 perc -- 87 percent of the adjustments Mr. Williamson seeks relates to either the discount

or summer associate time. And I would just like to address briefly, and, again, we've addressed them at length in our pleadings, we have addressed those issues in connection with correspondence that we have provided to his firm and we believe we have adequately addressed each and every item that he has raised but let me just go through them briefly.

The first one I've already addressed which is the discount. The second one was what he characterizes, Your Honor, as long billing days. Your Honor, as we indicated, that focused on two attorneys in our finance department. And what Mr. Williamson questions --

THE COURT: Pause, please, Mr. Karotkin. We all know Mr. Williamson and his status in the financial and legal community, but I don't want to turn this ad hominem. He's an official rule in this case and I'd appreciate it as a matter of courtesy to him and to me that you refer to him as the fee examiner.

MR. KAROTKIN: Certainly.

THE COURT: Let's not make it ad hominem.

MR. KAROTKIN: I was not intending to do that.

What the fee examiner questions was the endurance during essentially what was the ten-day period between the time Your Honor ruled on approving a 363 transaction and when it closed, which was effectively ten days later. Your Honor, I can attest, personally, to what these attorneys did. These two

attorneys spearheaded the closing, they negotiated and consummated all of the financing transactions that were involved with the closing including the DIP financing as well as all of the financing associated with taking the business enterprise out of Chapter 11 and selling it to the government. And, again, in an unprecedented time frame, these two attorneys were largely responsible for closing one of the most complex transactions perhaps in the history of the United States economy in ten days. They did work day and night.

THE COURT: This was essentially in the zone after I issued the 363 decision on the Fourth of July weekend and the time that Old GM closed with New GM?

MR. KAROTKIN: Yes, sir. If you were to look at the time records, I think all of the time or essentially all of the time to which the fee examiner is referring is between July 1st and July 10th, which was the date of the closing.

THE COURT: Continue.

MR. KAROTKIN: And, Your Honor, again, as you are well aware, speed was essential here. Speed was essential to preserving value. You recognize that in your opinion. You heard testimony about revenue perishability. You heard testimony about how important it was to get the brand, to get the General Motors brand and business enterprise out of Chapter 11. And that's what these attorneys -- these two attorneys accomplished. They did work day and night. There is no

evidence to suggest that their time records and what they did were not totally accurate. And they, Your Honor, are largely responsible for the expeditious closing of the transaction and the preservation of value that was associated with that. And we don't think there's any basis to discount their time. And I recall, again, that was one of the, I think, arbitrary percentage discounts that Mr. William -- I'm sorry -- that the fee examiner was referring to. There's no basis for it and we think that it's appropriate for them to be compensated.

The third item, Your Honor, is summer associates and law clerks. As we stated in our responsive pleading, Your Honor, we are certainly aware of your views.

THE COURT: Right. And you also, I think, since I said it twice in my decision are aware of my position on stare decisis.

MR. KAROTKIN: I certainly am.

THE COURT: All right. Do you believe that ruling was manifestare?

MR. KAROTKIN: Absolutely not.

THE COURT: All right.

MR. KAROTKIN: And as we said in our pleadings that although we believe that the summer associates provide valuable services, and if that is your ruling that's your ruling and, obviously, we will deduct that time.

THE COURT: Continue.

MR. KAROTKIN: As to law clerks, again, as we've noted, law clerks are not summer associates. Law clerks were largely attorneys located in our foreign offices working on the General Motors matter who are not yet admitted to the bar. And we believe that that time is appropriately compensable. It's not really different from first year associates we have in our office who are awaiting admission to the bar having not received the results yet and then not having completed all the paperwork in that regard.

THE COURT: Are those first year associates who are waiting to get their results or to get their character forms in, are they otherwise billed as lawyers or as law clerks?

MR. KAROTKIN: They are billed as associates. Although when they do sign letters, they do sign them in the capacity as law clerks.

THE COURT: Um-hum.

MR. KAROTKIN: Because they are not yet formally admitted --

THE COURT: And the folks you described have a fully completed legal education in whatever countries they've come from?

MR. KAROTKIN: Yes. Yes, Your Honor. All but one which we noted in our responsive pleading which accounted for, I think, 3400 dollars of time, which we would be prepared to deduct as well.

THE COURT: Okay.

MR. KAROTKIN: The fourth item which the fee examiner referred to was what the fee examiner characterizes vague entries. And I believe, again, that our pleading addressed that. We furnished information to the fee examiners as well. Frankly, Your Honor, we don't think that those entries are vague in the context of when the services were rendered and what was happening in the case.

Those services relate to the early stages of the case, again, mostly between the filing date and the closing of the 363 transaction. When we were dealing with, as I'm sure you well know, a multitude of parties on a daily basis, dealing with suppliers, dealing with vendors. As Your Honor well knows, General Motors had approximately fifty thousand suppliers dealing with employee questions, shareholder questions, dealers calling on a daily basis. Also dealing a lot of the time to which the fee examiner alluded to was time of people involved in discovery in connection with the 363 contested hearing. All of which was done, as you know, in a hugely truncated time frame. The other time related to noticing issues during that period and cure issues. Again, with respect to, as you well know, tens of thousands -- tens of thousands of executory contracts that had to be addressed in the context of the 363 sale.

Your Honor, we submit that under the circumstances

that existed at that time and what those attorneys were doing to detail, as I believe the fee examiner is concerned about, to detail every single call and every single person with whom those attorneys spoke many, many times during the day was neither practically possible nor efficient. And I think we have to look at these things in the context of what was going on, what was practical, and the goal that had to be achieved. To impose this type of a requirement on the attorneys at that time to detail every single item they were dealing with, every single executory contract they were dealing with was not practical and would have actually, in fact, detracted from achieving the goal that had to be achieved on an expeditious basis. And to impose, again, what the fee examiner suggests as a 15 percent discount, we think is arbitrary and not appropriate.

And, again, I think there has to be some degree of common sense and practicality in analyzing and considering fee applications. And I think that in that context and in the context of what was happening when that -- when those time charges were incurred, we don't believe those entries are vague and we think they're appropriate.

The other issues -- the other issue raised is the 10 percent holdback which was raised by the United States Trustee. And I will get to the disbursements if Your Honor wishes to hear about the disbursements.

THE COURT: Okay.

MR. KAROTKIN: But, let me first address the holdback. We don't believe there is any need for a ten percent holdback. The fee examiner never raised the issue of a holdback until, apparently, he saw the pleading filed by the United States Trustee. As I said, that surfaced for the first time in his pleading on Monday. We don't understand the justification for the holdback. There is nothing in the statue which requires the holdback. As Your Honor well knows, this case is not over. We will be here soon on another fee application and there will be others after that. There is no evidence of administrative insolvency. In fact, the U.S. Trustee's suggestion that perhaps this case may be administratively insolvent is not based on any fact of reality. As Your Honor knows there is a wind down facility which should be more than sufficient to address all the costs and expenses of the administration in connection with these cases. And as I said, this is not the last time you will see professionals here on fee applications. And we would submit to Your Honor that a holdback under these circumstances is not warranted nor really is there any support for it in the statute or based on any facts that exist in this case.

I would like to briefly address, Your Honor, the remaining issues raised by the fee examiner which essentially go to disbursements. And, again, we think we've adequate

addressed the disbursement issues and the fee application. There are a few that remain outstanding. We are happy to rely on what we have put forth in our pleading with respect to those items. We think they're appropriately reimbursable. But I would like to mention two or three issues which the fee examiner has raised which I think epitomizes where we've gone here and the total lack of practicality that we've reached in certain circumstances.

As you'll note from the fee examiner's objection, he objects to two hotel charges and an electrical service charge that were paid by our firm. One of the hotel charges, Your Honor, relates to a room that we booked at a hotel in Midtown for the organizational meeting of creditors. That was booked at the request of the Office of the United States Trustee so that the meeting could be held because they don't have the space to do it. We reserved the room, we paid the charge, we furnished the fee examiner with the invoice and he has objected to it on the basis that we haven't furnished additional information to justify the charge.

The other one relates to a similar type charge, again, for the 341 meeting requested again by the Office of the United States Trustee. We booked a hotel room. We did order soft drinks and coffee. We did not, though, Your Honor, as I -- as apparently the fee examiner requested keep track of what people had to drink at the meetings. We didn't that was appropriate

nor our job. And we think that that's appropriate and reimbursable. We have furnished invoices. Apparently, that is not sufficient for him. Frankly, we don't understand that. If the U.S. trustee asked that we book a room and a hotel room, we book it and that's what we do and that's what we do to accommodate the U.S. trustee. And if we cannot be reimbursed for that, then the U.S. trustee ought to book the rooms itself.

The other item, Your Honor, is with respect to an electrical charge of 8600 dollars, electrical services. And that as we explained and furnished the copy of the invoice to the fee examiner was in connection with the press conference that was held on the filing date in our offices. And it was held in our offices because Mr. Henderson was in New York that day for the first day hearing so he could be available in this courthouse. And, therefore, at the request of General Motors, we set up in one of our conference facilities in our firm everything necessary for a press conference and on one of the most important days in the history of General Motors. And we incurred electrical charges. We received a bill and we paid them. We furnished a copy of the bill to the fee examiner and he said well, that's not good enough. Go back and find out how many man hours were rendered by the electrical service department -- the electrical supply firm and what other items they furnished to us. We have not done that. We don't think that's an appropriate use of our time. We think it's

appropriately compensable. Perhaps, Your Honor, we should have told Mr. Henderson and General Motors that, why don't you delay the press conference so we can bid out all these contracts to save money for the estates. On the most important day in the company's history, Your Honor, we did not think that was appropriate and we think we should be reimbursed for those charges.

Again, our responsive pleading we believe has more than adequate addressed all of the issues raised by the fee examiner. We have agreed to certain adjustments as reflected in that responsive pleading. And as I mentioned on the record, Your Honor, we have certainly agreed to abide by your views with respect to summer associates as you indicated in the Chemtura case. And based on that, we would request that you approve our application as so modified. Thank you, Your Honor.

THE COURT: All right. Thank you. Mr. Mayer?

MR. MAYER: Thank you, Your Honor. Your Honor, Tom Mayer for Kramer Levin, counsel to the official committee of unsecured creditors. I won't belabor the points that are set forth in our pleading. I'd like to provide some additional comment in response to some of Your Honor's questions.

First, on the big picture, you asked, how do we ensure that the estate is not ripped off and that the people who worked hard are appropriately compensated? I have some exhibits that I'd like to hand up. I have shared them with the

U.S. Trustee's Office. I have shared them with the fee examiner. I don't think they have an objection. I've marked them as Kramer Levin 1, 2 and 3. They're directional in nature. I think it may help address some of the Court's concerns.

THE COURT: In substance, they're demonstrative?

MR. MAYER: They are demonstrative exhibits, Your Honor.

THE COURT: You may hand them up.

MR. MAYER: Thank you.

THE COURT: Provide them to anybody else in the courtroom who thinks he or she needs them if you have enough copies.

MR. MAYER: Your Honor, sometimes to the discomfitures of my partners, I'm a believer in benchmarking. I like to keep track of how we are doing the case versus other cases that we might view as comparable. Now, of course, there are no cases that are directly comparable one versus another and that is especially true in this case for all the reasons Mr. Karotkin raised them, I won't belabor.

Nonetheless, I view certain things as warning flags and certain things that may provide some assurance to the Court. If the ratio of committee counsel's fees to assets looks out of whack, that's something people need to be concerned about. And if the ratio of committee counsel's fees

to debtors' fees looks out of whack, that's something else people need to be concerned about. Certainly, if they're out of whack I have some explaining to do. Based on what was an extremely expedited project, we've attempted to provide some directional aides to the Court in anticipation of the question that you raised.

Kramer Levin 1 is a study that we asked FTI to do. And, again, these are directional. This is a study of creditors' committee's fees in several very large cases. And they're total fees over a total case and that's different from what we have today although I think it's fair to say that what other cases do in a year or two, this case did in forty-five days. But again, it's the ratios that count. So, hopefully this will be of some assistance to the Court.

And the cases that are dealt with here are Chrysler, Lyondell, Lehman, Delphi, ASARCO, Budget, Adelphia, Enron and ANC. Lehman, of course, is not an entire case. But, again, it's the ratios that count. If you turn to the second page, you'll see that Kramer Levin, as counsel to the -- this is the second page of Kramer Levin 1, as counsel to the committee in the GM case, we're running at about 25 percent of the debtors' fees. And in the other cases, the ratio is about 35, 36 percent.

If you look at our fees as a percentage of book value assets, which is an imprecise measure but we try to be

comparable, there's no comparison, it's a basis point versus thirty-nine basis points. So, that's Kramer Levin 1.

Now, Kramer Levin 2 is something that my own firm did off of fee applications. And it tries to hone on -- hone in on Kramer Levin --

THE COURT: Pause. Before you get to Kramer Levin 2, Mr. Mayer, if I were holding a valuation hearing, which we do from time to time, and an expert were being crossed on comparable -- on a comparable analysis and comparable trading values, comparable companies and the like, we might look at a smaller universe and look at the closest comparables. For that, I don't know, would Chrysler be the closest comparable?

MR. MAYER: Yes, Your Honor, and that's dealt with in Kramer Levin's 2 and 3, in particular.

THE COURT: Okay.

MR. MAYER: We think Chrysler really is the only comparable. But even Chrysler, where my firm was counsel to the creditors' committee, it's the principal reason why I'm here today, the committee and General Motors felt that we've been through the fire and we could try to do it again. If I may move to Chrysler for a moment.

The fees in GM compare favorably with the fees in Chrysler on a couple of grounds, some of which were shown on this chart and some of which are not. The cases had similar timelines with this major difference. In Chrysler, the

debtors' firms had some chance -- strike that.

In General Motors, the debtors' firms had more chance to prepare for the filing. In Chrysler, there was much greater fire drill immediately before. My impression was the treasury was very committed to reorganizing General Motors and its decision to reorganize Chrysler wasn't done until fairly late. So, there wasn't the same degree of preparation for Chrysler that there was for General Motors.

Also, with respect to General Motors, there's real value going to the folks that are left behind. It's probably appropriate to talk a little bit, take a step back and talk about functions of committee counsel in these two cases because they're different than they are in the run of the mill cases.

There's two sources of value for these cases, for Chrysler and General Motors, for unsecured creditors. And one source of value is who gets taken along. Clearly, if the purchaser --

THE COURT: You mean, for instance, by assume and assign for the vendor community?

MR. MAYER: Correct.

THE COURT: The supplier community?

MR. MAYER: Supplier community, two-thirds of the dealers, the Pension Benefit Guaranty Corporations Pension Plan, the modified Retired Medical Benefit Plan for the UAW, there were constituencies here that got taken along. And

there's nothing wrong with that. That happens in virtually every transaction. The purchaser decides which liabilities it wants to take along and which liabilities it wants to stay behind. And there are theoretical, sometimes not so theoretical arguments about how fair that is and whether it's being done for the proper purpose, but that is a fact of life. There are people who are taken along and there are people that are left behind.

In Chrysler, the focus of the first forty-five days was on the terms by which people were taken along and there was a lot of work done on that. What was left behind for creditors, initially, was pretty close to nothing. For a period after --

THE COURT: Because Chrysler had so much secured debt?

MR. MAYER: There were -- wasn't -- that's an interesting question. Chrysler's secured debt was disproportionately large as a percentage of its total debt structure. GM had approximately twenty-three billion dollars of unsecured bonds and a -- my recollection's around eight million dollars of secured debt. That doesn't always translate into an asset ratio, but GM had raised a lot more money and had spent that money on plant and equipment, etcetera, with respect to unsecured creditors, so it was a different set up.

With respect to General Motors, there was a deal cut prior to this case between representatives of the bondholders

and the United States Treasury. We are custodians of that deal. We did not cut it. We came into this case and as I think Your Honor knows, we were told there's warrants and stock of New GM that's going to be issued to Old GM for unsecured creditors. Your job is to make sure that stock gets to unsecured creditors. That's my job on the second part of this case. The first part of this case was, A, hoping, trying to make sure that that happened, and B, increasing the number of claims that were taken along.

One of the odd dynamics of this case is that the people who were left behind, there wasn't the phenomenon we sometimes see of the crab grabbing the crab that's escaping from the bucket and saying, no, you have to suffer with me. The people who were being left behind, principally bondholders, wanted to see as many obligations go to New GM as possible because it would diminish the dilution that they would suffer if they were left behind. So, the -- this actually led to a very interesting committee.

A committee is down by six members since the sale closed. We started off with fifteen. That committee, and I bow to the United States trustee's judgment in this, she put together an extraordinary balanced committee. The reason that the committee filed what we called a limited objection, if you take a look at it there were certain things that weren't limited at all to the sale, is that there was a majority of the

committee that was against the sale as originally constructed. Because you had people who were being taken along, people who were being left behind and people who realize they would benefit if more people were taken along. And everyone who was being left behind was vitally interested in how much money there would be to pay for the expenses of the case. So, you run short of money, you start raking into our stock and warrants, and that for us is anathema.

So, one of the things that was -- that took a lot of time in this case, unlike in Chrysler where the division on the committee was pretty clear, most of the people on the committee were being taken along. They wanted to see the sale go through. They wanted to fine tune it here and there. They wanted to be supportive of the debtors to get the sale through. And the opposition in Chrysler to getting a sale through was much greater. But the basic value in Chrysler during the first part of the case was just making sure that people got taken along and they got taken along on a fair basis. Again, this is probably more than you need on Chrysler. I should probably -- unless you're interested in more color.

THE COURT: Well, I had observed that the creditor committee fees as a percentage of debtor fees in Chrysler were, if I read your exhibit correctly, 26.3 and here they're 25.6; that looks pretty close to me.

MR. MAYER: Yes, and I think that that's a fair

comment. I mean we personally think that in this case, during one of the conversations with the fee examiner he pointed out that our fees were roughly the same as Jenner & Block's. And my response to that was, Jenner & Block worked on this case for six months, seven months, prior to the filing. We had thirty to forty-five days. That's not fair either. I mean we've showed that in Kramer Levin 2 where our fees are showed as a ratio of Weil, Gotshal and Jenner & Block's fees including their prepetition work; that's an exaggeration. A lot of stuff happened prepetition that didn't have anything to do with this case. It's not easy to back out. But unlike Chrysler where Jones Day was largely handled -- handed a fire drill and said get this ready immediately, this was a case that was some time in gestation. There was an exchange offer that didn't work. And that both created a fair amount of legal work for GM's counsel pre-bankruptcy which isn't appropriate to measure us against but also created a fair amount of work pre-bankruptcy that it is appropriate to measure us against.

So, I think we are comparable to Chrysler in terms of the level of fees and if you want to take a look at fees to value, clearly GM is a much bigger company than Chrysler. And the value going to unsecured creditors was much greater both in terms of how much got taken along and how much was left behind.

This number is sufficiently in the public domain that I don't have a problem mentioning it here. The original

guesstimate as to how much that GM stock and -- New GM stock and warrants were worth. And this is a nine month old number. It's not material because whatever the circumstance were that gave this number during the negotiations are no longer present today. But the original guess was that that was six billion dollars of that.

Now, I realize, and people think this case is over --

THE COURT: That's the number I used in my opinion, if I recall.

MR. MAYER: I think that that's correct. I would have to go back and take a look. That was before Toyota had problems with its accelerators. I apologize. In any event --

THE COURT: Would that suggest that it's worth more now?

MR. MAYER: I'm not an investment banker, Your Honor. The auto industry is doing a lot better. Toyota has its problems. There's a lot of interest in the stock. I know I have bondholder representatives who are champing at the bit saying, why the heck aren't we out yet, because they're very eager to get that stock.

So, there was a lot of value here. And I think that the level should also be compared, not just to the increased size of General Motors, but the fact that we were really dealing here with a lot of value that had to be preserved.

In Chrysler, we didn't really care too much about the

transition services agreement, about how the estate was going to be managed going forward. We didn't have that much at stake. Here, we had a lot at stake. Here, we had six billion dollars at stake in addition to all of the agreements that were being assumed and the creditors who were being taken along.

So, what Kramer Levin 2 does, is take a ratio of Kramer Levin's fees to debtors' fees in various cases. Chrysler is the most comparable. The other two, Delphi is the largest auto related case before the major -- the OEM's filed. Dana was probably the second to largest auto parts supplier case before the OE's filed. It was one we were involved in so the data was readily available. And we took six month periods in those cases because those were six months leading up to plans which were comparable to the forty-five days that we had to get this deal done. And, again, these are directional, but I think they may help the Court in getting some handle as to whether or not Kramer Levin in any way took advantage of this estate through the amount of work that we did. I think the answer to that question is, no.

The fee examiner's report, the thing that bothered us and, frankly, bothered our client the most was that it was tinged with a view that there was nothing here for the committee to do and our roles are limited and so what the heck are we doing here anyway. We completely reject that. There are hundreds of thousands of creditors out there who are

depending on the committee to deliver value to them. We are the only estate fiduciaries on one side of this trade. That's not meant to be criticism of anybody. The debtor was legitimately focused on getting the deal done and moving the operations to New GM and saving the business and the United States economy.

Granted, we were focused on getting value to unsecured creditors. Those two are not the same and, frankly, we thought we played a very important role in identifying ways that creditors could realize the maximum from these cases. That they would not have to worry about having their stock diluted. That as many of them would be taking along a possible.

Just to take the most -- the brightest example. The debtors' had no interest in arguing that New GM should take along as many claims as possible. We have an interest in making sure that that happened. We didn't get as much as we wanted and, actually, from time to time we still think about ways we might revisit that issue but that's not for today.

The debtors' had agreed on a budget with treasury. We opposed the sale because we thought he budget was low and we got another 225 million dollars. In our view, we were materially helpful.

THE COURT: On the wind-down budget you're referring to?

MR. MAYER: On the wind-down budget. One of the

specific issues that the examiner raised with our fees was how much we spent on environmental claims. Your Honor, this case is months behind schedule. We really hoped we'd have a plan on file now; we'd be looking at the finish line.

The reason it's not making progress is the environmental claims. That's the single biggest stumbling block to getting out of this case. You've got state after state after state with its hand out saying we need more money for cleanup. And you've got the debtors' saying you do not need more money for cleanup. And you have the treasury in between.

This is a huge gating item in this case and we have devoted, so far in my view, not a terribly large amount of resources to being involved in this matter. Well, we're going to be involved more going forward because without fixing this problem, we can't get out. So for the examiner to say that we just, sort of, sat back and, you know, read the occasional memo from Weil, Gotshal, I don't think is correct. I've been in other cases with large environmental claims.

In the ASARCO case, I represented two bondholders that had 300 million dollars of unsecured claims. I had a committee in that case, you had the debtors' -- you had all sorts of people. And yes, we were trying to make a bid for control of the company through the plan but we were also looking at other people, in effect, buying our company from us. We ended up

spending five million dollars on environmental claims because there was a billion three of un -- of environmental claims in that case. Fortunately, most of them unsecured. It was a dilutive matter rather than an administrative expense matter.

In the Dana case, there was a 300 million dollar claim, unsecured claim, came out of the woodwork at the last minute. And we had to spend several hundred thousand dollars on that. This case -- the biggest single item in the wind-down budget by far -- and I don't believe that number is public -- is a reserve for environmental claims. We have to bring this case in under that reserve.

So I really take issue with the examiner's view that the committee should not have spent resources -- the estate's resources on the environmental claims. That is a critical item in this case.

Since I'm ticking through some of the examiner's points, the examiner wanted to reserve rights with respect to our collateral review. I don't understand that. Collateral review is something that creditors committee has to do. It's not an option. You don't come into a case with eight billion dollars of secured debt and say gee, I guess I won't look at their lien structure. You have to do that. It's --

THE COURT: But don't I have the billion dollar adversary before me that involves disputes as to collateral?

MR. MAYER: Yes, you do, Your Honor. And I don't want

to take credit where no credit is due. In fairness, one of the banks counsel called me up early in the case and said this is what you're going to find. We don't think it has any material difference to the case but you're going to find that we filed a UCC 3 releasing the lien with respect to a billion five of collateral. In our view, it wasn't authorized, it was a mistake, it has not effect.

Well, the first thing you do when you get that call is you look hard to see if there's anything else. The amount of money we spent reviewing the GM collateral was not out of line with respect to Chrysler. And GM is a much bigger company. So as an absolute matter, the amount we spent, frankly, was trivial to the dollars of liens we were looking at.

But second, we were looking hard because there was already something to look at. Your Honor, conflicts counsel has taken over. There are forty financial institutions involved in that lawsuit and I think you'll have an interesting hearing on summary judgment and I don't think we need to get into the merits. That's not a trivial action.

Butzel Long has done an excellent job of taking the ball from us because we got to a point where there were going to be conflicts after we did our review. We have waivers in place to review these matters but not to litigate them. And that's why we have Butzel Long's conflicts counsel. They are litigating. It's a billion five. You don't turn your back on a

billion five. I think it's an interesting lawsuit. I won't go further.

We agree with Mr. Karotkin that a five percent across the discount -- there's no basis for it in the law. The fee examiner, I think, believes that it would be appropriate nationwide for people to start taking five percent discounts because the reason he gave in his response was that it will encourage discounts in other cases. I don't think that's a justification for discount here.

Frankly, Your Honor, if this were a completely private transaction and attorneys for the seller and perhaps the seller's independent board of directors -- which in a way is what a creditors committee is in a circumstance like this. We were involved in a transaction involving 130 billion dollars of book value assets, nobody would be billing at a hundred percent of time. There wouldn't be a discount applied to those fees. There would be premiums paid.

Nobody's asking for a premium in this case. There's enough trouble in the world. But I reject the examiner's view that the circumstances of this case indicate that a discount is appropriate. I just don't think that's right. I don't think there's a basis in the law for it.

With respect to the summers, we'll follow Weil, Gotshal's lead. We don't have a problem with writing off the summer associates. With respect to associates not yet admitted

to the bar, Your Honor, people come to work for us right out of law school. Some of them have already taken the bar; some of them take the bar six month later. The moment they hit our offices, they're working. They're being billed at the same rates, they're being -- they're certainly collecting salary and bonus at the same rates. They are treated as associates. Hopefully, they pass the bar immediately. Every now and then, that doesn't happen. But they function as lawyers for who m other clients pay standard rates.

And with respect to your earlier question of Mr. Karotkin, the rates I charge to this estate or Chrysler are the same rates I charge to my other clients. I actually had, as it turns out, in another case, a major case -- I believe this is a matter of public record in the Netherlands. The Dutch trustee in the Lehman case sought to retain Kramer Levin or another firm and asked us whether we would be prepared to take a discount on our rates and I said no. I said you're going to require our full attention. We're going to be providing what we believe to be service that is worthy of the hire and we don't believe in discounting our rates. We think our services are very much in demand.

And this is -- anecdotal. I had to resign from various representations to take this one. I left some very unhappy clients in connection with, for example, General Motors Acceptance Corporation. And not that this is relevant to

anything really but in January of '08, I followed a number of my clients in buying, as a personal investment, notes of General Motors Acceptance Corporation and when this company filed, I had to sell them at a substantial loss because I couldn't figure out a way to justify representing the official committee of GM and still hold GMAC paper. So I took a personal loss on that matter. It's not -- it's all in our affidavit of disinterestedness. I don't think a discount across the board is appropriate.

I want to deal with what are, to me, the toughest parts of the examiner's -- fee examiner's report. Well, let me deal with one thing -- I mean, there are certain things -- other things in the examiner's report which I think are misguided. I've never been on a case where someone said to me give me your Westlaw and Lexis contracts. These are the same contracts we have with respect to all of our clients. We never pass -- do anything but pass through the exact charges. If we get discounts, we pass through the discounts.

There are confidentiality agreements covering these agreements. I don't -- I've never seen, in any case I've ever been in, the fee examiner say we want the Court to enter a protect order so we can get your contracts with vendors and audit them. At some point, I think the expense of complying with this kind of investigation, outweighs the benefit that is intended to be provided to the estate.

Which leads to -- neatly, to the next topic which is the toughest one and that is the examiner's comments on block billing and vague entries. We believe he -- that there were a could of firms that were subject to the auditor's review, which were us and Jenner & Block, which may have contributed to the detail of the examiner's complaints. Your Honor was a practicing lawyer. I'm not going to defend every entry that my colleagues have entered except to say, as Mr. Karotkin did, that when you have thirty days from retention to sale and forty-five days from retention to closing -- forty-two days from retention to closing -- the point about block billing and vague time entries is to make sure that you don't have lawyers who are filling the idle hours by putting down a lot of time.

Nobody had idle hours in this case. Every day you came to work there were new documents. There were new drafts. We provided real-time reports to the creditors committee which, as I said, was very finely balanced between do we support, do we oppose. We provided real-time reports on progress on the documents. We found forty-eight material issues to report to the committee on and progress every day. There were leases that had to be reviewed, every day. This was something that we had to look at every day and we don't think that these issues -- we think that some of the block billing complaint are misguided. We think some of the vague -- the comments of vague communication are just wrong.

In the short time allowed, we have tried, at considerable expense, and I don't know who'd going to end up bearing that, to try to respond in part to the examiner's concerns about block billing and vague time entries. Given additional time, I suspect we can account for even more of the entries that we dealt with. The one thing I'm certain of is that this Court doesn't want to spend its time going through entry by entry.

So, we think that under the circumstances of the first forty-five days of this case, the rules on block billing and the request for additional specificity on time entries -- we think that they should be relaxed given the unique circumstances of the case. I don't have authority to cite to you that says that the law requires or urges that you do that but I do ask that you consider what you've seen before you and determine whether you believe a twenty-five percent across the board cut in time spent, actually spent, is appropriate given the pressure of the case.

Under future applications, yes, we need to do better than we did in the first forty-five days and I'm not quarreling with that. Part of the problem is that you throw a lot of corporate and real estate people at a problem and they don't have the same discipline as the bankruptcy people; but that's my problem, that's nobody else's problem.

Finally, with respect to he holdback. I'm here asking

for allowance of Kramer Levin fees. Interim allowance because there is always, of course, a final allowance. I'm asking for interim allowance of the Kramer Levin fees with the exceptions noted; that is the summer associates we think should be taken off. There're a couple of other minor things that should be taken off. And we think our fees should everybody allowed. And we agree that ten percent -- half of the twenty percent holdback should be paid. We are not asking that Kramer Levin be paid the balance today.

I've talked to the committee about this and, again, the committee's view is that it is paramount importance that the stock and the warrants get to creditors and that administrative expense claims not be an obstacle to that. And as I said --

THE COURT: Am I correct that if this case somehow were to go administratively insolvent the 1145 exemption would be in jeopardy and your clients or your constituency's ability to trade the bonds and warrants could be materially impaired?

MR. MAYER: Basically, yes, Your Honor. If I may adjust it somewhat, given how much value there is in the stock and warrants, as a technical matter, the estate will never go administratively insolvent but to the extent the cash that's left behind is inadequate to pay priority administrative expense claims, yes, we'd have to figure out how to sell the stock to raise money.

Nobody wants to think about it. It won't be an 1145 transaction. It would be a private placement. We don't want to go there. And as I've said to my partners and FTI fully understand this, as I said to Your Honor when we were dealing with Evercore, if this case ends up having to sell stock to pay admin, from our perspective it's a failure and all the professionals are going to be subject to extreme scrutiny.

And for that reason, we are not asking for that last ten percent to be paid to us today. We think that's appropriate to be held back. But we also think we have a real role to play in getting this case out sooner rather than later and getting it out without invasion of that stock and getting it out without too much dilution.

All of these things, we really care about and I don't want to go Richard Nixon on this but I do get calls from the little old lady whose SUV blew up in her home and her insurance company settled with GM and got money and GM called her for years saying we want to settle with you but never quite did and then they filed.

She's not the worst. There are people who, Your Honor -- there are people who've claimed that they died or were injured for GM claims. But they call us. This was a widow and orphan bond, Your Honor. Yes, there are large funds out there who hold major lots but GM bonds were bought by everybody. Heck, GMAC bonds were bought by people like me. They call.

That's our constituency. We talk to them. I don't think the examiner talks to them. Thank you.

THE COURT: All right. Thank you. Next. Mr. Eisenband is it?

MR. EISENBAND: Yes.

THE COURT: Yeah. You're FTI if I'm not mistaken.

MR. EISENBAND: Excuse me, Your Honor?

THE COURT: You're FTI.

MR. EISENBAND: Yes, I am.

THE COURT: Okay. At this point, I've heard fairly extensive presentations from Weil and Kramer Levin so I want you to give due regard to that and try as hard as you can to focus on issue that are unique to FTI, if you would. Go ahead.

MR. EISENBAND: Thank you, Your Honor. Michael Eisenband, from FTI, financial advisor to the committee. And I will comply with that because what I will address is really a singular objection of the fee examiner to FTI. One that we think is both flawed and illogical.

FTI's fee structure was one that, for the first five weeks -- approximately five weeks of the case until the 363 sale, we had an hourly fee structure. And subsequent to the 363 sale, our fee structure is fixed in nature, 750,000 dollars per month for the first three months, 500,000 dollars per moth after that with a completion fee.

The fee examiner has objected to a certain number of

hours that we -- that FTI has spent preparing our retention documents and fee preparation. The issue that they find are the hours that we spent during the fixed fee portion of our fee structure. We explained to the fee examiner that their objection was both illogical and flawed for several different reasons, primarily because it is a fixed fee structure.

A few points that I'd like to make on it. During our hourly fee period, FTI's hourly -- average hourly rate was approximately 588 dollars per hour. Now, while we billed subsequent to July 9th on a fixed fee basis, one could take the total fixed fee, divide it by the number of hours that we recorded and one would come to an average hourly of 475 dollars per hour, a full 112 dollars per hour less than what we were charging when we were billing on an hourly basis.

If one was to eliminate one hundred percent of all of the time that FTI spent during the fixes fee portion of their structure from fee preparation and retention documents, the average hourly would be approximately 540 dollars, still below what the average hourly was when we were billing on an hourly basis. FTI considered simply amending its fee application. And -- the number of hours, actually, that the fee examiner said we went over, a five percent of the total for the entire period, was approximately 321 hours.

FTI contemplated simply filing an amended application withdrawing the 321 hours. We thought that would certainly

prove the point because we're on a fixed fee structure; there would be no deduction from our fees. But FTI didn't think that was necessarily the right way to go. We spent the hours; we wanted to come to the Court and explain the position.

A couple of other points just on that to explain the point. If FTI was to have recorded an additional -- any number of hours, one hour, ten hours, on non-fee preparation time, FTI would not be paid for that. However, if nothing else changed but FTI was to charge just one additional hour to fee preparation, the fee examiner would actually object to an additional 588 dollars.

So, in an extreme example, if FTI would've spent 2,000 more hours during the fixed fee portion -- 2,000 more hours which would've -- if you would've computed an average hourly, it would have been below 300 dollars an hours, the fee auditor -- the fee examiner still would've looked at it and said well, as a percent of the total hours, you spent too much time on fee preparation, fee retention, we're proposing a reduction.

And lastly, I'd just like to point out that the whole nature of a fixed fee billing structure is one that you're not billing on an hourly basis. So, to the extent that FTI or any firm tat is billing on an hourly basis -- billing on a fixed fee structure, it's the value of the services that we're providing. The fee examiner had no issue on the value of

services and, I think, when you look at the value, again, during the fixed fee portion, we didn't bill hourly and the average hourly, if you would just go in and compute, total fees divided by total hours came to 475 dollars and hour.

Implicit in that is FTI billing lower than it would have if we were billing on an hourly basis. And to just compute, the 321 hours is the number of hours the fee examiner said FTI was in excess of the five percent. If you would have taken that and times it by the 588 dollars per hour, it would've been an addition 480,000 dollars to the estate.

And -- I'm sorry, lastly --

THE COURT: You mean the estate would've had to pay that extra if you didn't have the fixed fee arrangement?

MR. EISENBAND: Exactly. If we would have stayed on an hourly basis --

THE COURT: I got you.

MR. EISENBAND: -- it would have been close to a half a million dollars more. Additionally, while we don't buy into and we think the fee examiner's logic is -- there is no logic to it; it's flawed. I would say that they computed it incorrectly even if they were going to compute that because they're objecting to 321 hours. As I said before, our average hourly, if you just did the computation --

THE COURT: Well, Mr. Eisenband, let me interrupt you. Stick to the broad concepts. I understood your concept about

it being a fixed rate. So, I'm wondering if this point in cumulative.

MR. EISENBAND: Excuse me, Your Honor?

THE COURT: I'm wondering if your last point in cumulative.

MR. EISENBAND: Yes.

THE COURT: Okay. So, anything else you have?

MR. EISENBAND: Yes. The only last thing is that if you were going to compute it, under the fee examiner's logic, you would use 400 -- at a minimum or at a maximum you would use the 475 dollar rate not the 588. But to exacerbate the issue, the FTI employees that work in our fee preparation and retention documents are the lower level employees and if you were going to actually put an average hourly rate on it, if you would look to the hourly portion of the first five weeks, you'll notice that the average hourly of the lower employees are more in the 300 dollar range.

THE COURT: Okay. Thank you.

MR. EISENBAND: Thank you, Your Honor.

THE COURT: All right. We'll take -- we're been going for almost an hour and a half. We'll take a ten minute break and then I'll hear any of the others who feel like they need to supplement what they said in their papers. We're in recess until 11:20 upon the clock there.

(Recess from 11:08 a.m. until 11:17 a.m.)

THE COURT: Have a seat, please.

Folks I have some concerns that the additional professionals might not be -- need to speak as much as the first couple did. And I have concerns about our ability to get everything done today if we spend a lot of time getting into some fairly detailed things, detailed numbers and the like.

I'm not going to put a sock in everybody's mouth but I'm putting you on notice now, first, that I have a conference call on another matter that's going to keep me off the bench between 3:30 and 4 and, second, that if you want a decision from me today or tonight, while I can work as late as I did during the first six weeks of this case, I don't know if you guys want to sit around that late for a ruling. So I would encourage you to use some self-discipline in your remarks supplementing things.

Obviously, this doesn't apply to the fee examiner who I would expect will want to respond, in length, to everything that's been said. But for those other than Weil and Kramer Levin, I would -- not order but invite you to show some self-discipline.

Okay. Next professional.

MR. WEISS: Good morning, Your Honor. Robert Weiss on behalf of Honigman Miller Schwartz and Cohn. And I think my presentation will be a perfect segue to the Court's remarks. We've had a dialogue with the fee examiner's counsel. We

are -- accept the reductions that are proposed by the fee examiner and unless the Court has any questions, I have nothing further to say and we rely upon our filing.

THE COURT: Very well. I don't. Thank you very much.

MR. WEISS: Thank you, Your Honor.

MR. TROSTLE: Good morning, Your Honor. Patrick Trostle from Jenner & Block. We are special counsel to the debtors. Like the prior professional, we also have been in a dialogue with the fee examiner. We have accepted the recommendations for reduction from the fee examiner so we have no objection here today.

THE COURT: Very well, thank you. Mr. Seidel?

MR. SEIDEL: Good morning, Your Honor. Barry Seidel, Butzel Long. Butzel Long is special counsel to the creditors committee in this case. We have had discussions with the fee examiner and have reached agreement as to all points save for one. And as we mentioned in our reply we filed a couple of days ago, we have a dispute as to whether or not the fee examiner's recommended five percent cap on retention/compensation matters is appropriate.

It's particularly inappropriate with respect to Butzel Long because during the fee period, we had little to do. We assisted the committee with respect to supplier issues which was part of our mandate and that was over fairly quickly. As Your Honor knows and as Mr. Mayer remarked, we are handling an

adversary proceeding to try to recover a billion and a half dollars for the estate and that work has only started in the second fee period.

So the question I ask is what should it cost to get retained and what it should it cost -- what's reasonable to prosecute a fee application? And as my reply suggests, it's not a percentage issue with respect to any particular professional, it costs based on, it would seem to me, the average of similarly situated professionals, roughly 40,000 dollars. Eighty to a hundred hours to get retained and maybe twenty-five or fort hours to prosecute the fee -- monthly fee statements and fee applications.

And Butzel Long comes in at about 40,000 to get retained and 15,000 to get paid. A total of 55,000 dollars of which the fee examiner wishes to reduce that about by 44,000. So roughly we're asking for 230,000 dollars in fees. Applying a five percent cap, that would equal about 11,000 dollars, Your Honor. And the difference between the 55 that it actually costs and the 11 that is the five percent is the 44,000 that remains in dispute.

THE COURT: All right. Thank you.

MR. SEIDEL: Thank you, Your Honor.

MR. WALSH: Good morning, Your Honor. Brian Walsh of Bryan Cave on behalf of Evercore Group. Your Honor, I want to heed your several admonitions this morning to keep it brief. I

think the fundamental issue between the fee examiner and Evercore is whether this hearing ought to be adjourned as to Evercore. We don't believe that would be appropriate.

The fee -- the principal fee -- the transaction fee was earned when this transaction closed in July. Evercore's engagement concluded at that point. Evercore's not providing for the services to the estate at this point. After that point, there were lengthy negotiations with representatives of the creditors because Evercore's engagement was not approved by the Court until October -- late October of last year, long after the work had concluded, all the facts were on the table about the work that Evercore had performed and the value that it had provided.

At that point, the payment of the fee was restructured so that 4.33 million dollars of the transaction fee, payment will be deferred until confirmation of a plan that meets requirements set out by the creditors' committee. Mr. Mayer referred to the negotiations with Evercore in his presentation earlier today.

The creditors, at that time, had the benefit of hindsight. They negotiated modifications that they believed sufficient to protect their interest in the estate. Evercore is not asking to be paid on terms any different than what it previously negotiated, but there's no reason for those fees not to be allowed at this point, subject to the previously

negotiated payment contingency. Given the unusual procedural posture here, we don't think it's appropriate that Evercore be left in limbo when it is not providing further services, has no ability to affect the course of this case going forward.

Your Honor asked the parties to address how do we ensure fairness on one hand, to the estate, and on the other hand, to the professionals. In the circumstances we have here, I would suggest to the Court that honoring the restructured fee previously negotiated with full knowledge by the relevant parties-in-interest, would be the way to ensure fairness to both of those parties. Other than that issue, Your Honor, I'm happy to rely on what we've put in our papers, unless the Court has any questions at the moment.

THE COURT: No, I don't. Thank you.

MR. WALSH: Thank you, Your Honor.

THE COURT: All right. I've given everybody who needed a chance to be heard orally an opportunity to --

MR. KAROTKIN: Pardon me, Your Honor. I believe the Claro Group is on the phone.

THE COURT: Claro?

MR. KAROTKIN: Yes.

MR. DEEMS: Yes, Your Honor. This is Douglas Deems for the Claro Group.

THE COURT: Yes. Mr. Deems, do you want to tell me first -- of course I'm going to want to hear the fee examiner's

perspective as well -- as to the extent -- after you provided additional information to the fee examiner, which may have been after the fee examiner objected and after you filed your pleading, you still have differences? I did notice that the amount that the fee examiner wants to chop, which I recall may have been as high as 44,000 bucks, was a pretty major portion of your fee app, which as I understand it, was for providing environmental services to help the debtors address their environmental responsibilities.

MR. DEEMS: Yes, Your Honor. It was even after -- I received an e-mail last night from counsel for the fee examiner, agreeing to withdraw their additional objection to our suggested evidence. But by my math, the reduction that remains around 35,000 dollars, so it still remains almost twenty percent of our fee application. And so, yeah, we do have a substantial difference, and primarily relating to the issue of what is perceived to be a failure to bill in point -- in tenths of an hour, which amounts to probably 22,000 of the 34,000 at issue.

THE COURT: Right. Now, Mr. Deems, how many -- how often had your firm been involved in bankruptcy cases before this one?

MR. DEEMS: Well, the professional -- we don't work in the bankruptcy context at all. We've done it once or twice before, Your Honor. But it's not a regular part of our

practice.

THE COURT: Um-hum.

MR. DEEMS: So I believe that we followed your initial comments about those who really don't operate in this world.

THE COURT: Tell me about that once or twice. Were you then subject to the requirements for tenth of hour time recording?

MR. DEEMS: In that case, it was different set of professionals involved. And I don't believe we were in that case. But I, you know, to be honest, I'm not a hundred percent sure, Your Honor.

THE COURT: Um-hum.

MR. DEEMS: There's only one other matter that I can recall where we submitted our billing to the bankruptcy court.

THE COURT: All right. Further points you want to make?

MR. DEEMS: Yeah, the only thing that I would say, Your Honor, that's not perhaps clear in our papers, is the value that we provided to the estate was unique, and that because we had particular expertise and knowledge about these sites prebankruptcy, the estate got substantial value from getting us involved, because they didn't have to get the other environmental professionals up to speed about these sites. We generally knew about the sites and were able to sort of leverage that knowledge. And I just want to make sure that in

deciding or making a decision on our fee application, that it's recognize. Because I think that resulted in thousands if not hundreds of thousands of dollars of savings to the estate in this first application.

THE COURT: Okay.

MR. KAROTKIN: May I be heard briefly on the --

THE COURT: Yes, if you want, Mr. Karotkin.

Mr. Deems, you willing to yield to Mr. Karotkin? Mr. Deems?

MR. DEEMS: Yes, Your Honor.

THE COURT: Are you willing to yield to Mr. Karotkin?

MR. DEEMS: Absolutely.

MR. KAROTKIN: Just very briefly, Your Honor. On behalf of the debtors, the Claro Group -- let me just go back a minute. As Mr. Mayer indicated, the environmental claims are perhaps the major item -- gating item for a plan. What he said was absolutely correct. And in addressing this issue with the United States Treasury, the United States EPA and the states, Claro is instrumental in this process in trying to come with the appropriate estimates of the cleanup costs. And they are vitally involved. And from the debtors' perspective, the services that they have provided are really invaluable to moving that process forward.

THE COURT: All right. Thank you.

Okay. Am I correct that you're now done, Mr. Deems?

MR. DEEMS: I am. Thank you, Your Honor.

THE COURT: Okay. Is it now time to give the fee examiner's counsel an opportunity to be heard -- or the fee examiner himself?

Mr. Williamson, good morning.

MR. WILLIAMSON: Good morning, Your Honor. Thank you very much. For the most part, this morning, I will speak for myself, but several of my colleagues from Godfrey & Kahn are here and will be able to address individual components that have been raised by counsel for interested parties.

Let me start, Your Honor by noting how struck I was by the points of agreement this morning. Of course this case was extraordinary. Of course the professionals were skilled, added value, worked long, long hours. That's not in doubt. I think the one constant in cases that involve a fee examiner is criticism. I did not take this assignment thinking that it would be a popularity contest, because if I had, I know that I would have lost the popularity contest.

THE COURT: I share your seat in that regard, Mr. Williamson.

MR. WILLIAMSON: Some cases, Your Honor, where there's been a fee examiner, the examiner has been criticized for focusing on the trees not the forest. What we've tried to do is to focus on the forest. But to do that, one needs to look at the trees. And with the assistance of Stuart Maue, we've

looked at all the trees, including an electrical bill, including a 24,000 dollar hotel charge that has an invoice which merely says "miscellaneous".

But we've really tried to get at the value, because that word is embedded in the code, as Your Honor knows. And the value provided by the professionals here was extraordinary. And to the extent that we have quarrels and disagreements, they are not between counsel for an interested party and the fee examiner, they're about the statute and the U.S. Trustee's guidelines and the local rules of this court.

We wrote that memorandum, Your Honor, not for your benefit, because it surely was gratuitous in that sense, but because even at first blush, in those early days in January and February, it was clear to us that for reasons good and not good, the professionals in this case, with some exceptions, did not follow the U.S. Trustee guidelines or the local practices of this court -- the court at large, in the case of the Southern District of New York.

We looked at fourteen individual applications, Your Honor, and provided the Court with fourteen individual reports. We have also tried to pull some threads together. And one reason that we hope this Court will take a bit of time to render its decision, is because we think there is guidance needed on some of these generic points. Administrative overhead, block billing, keeping time in increments, the entire

spectrum of questions about expenses.

Your Honor, the issue is not where a lawyer from Detroit ought to stay when he's in Manhattan. She can stay wherever she likes. The question is, who should pay for it. And that basic question, who should pay, applies across the board, whether we're talking about car services or computer research. Some firms, for example, in this case, don't charge for computer research. Others do. I think that having the contracts, just to pick one item, would help us collectively understand if there's a better way than firm-by-firm, incurring 125,000 dollars in computerized research. Perhaps there's no other way, but as I see my assignment, it's to look for larger issues, not just micro but macro. The other reason --

THE COURT: Pause, please, Mr. Williamson, because you raised a provocative thought, but I am trying to get my arms around it in terms of what might be a lack of uniformity as between different professionals in, by way of example, how they charge for computerized research. It's my impression that if there were a case of the Second Circuit, or something binding on me, I'd know about it. And I also think if there were a case in the Southern District that had ruled on it, kind of like I ruled on summer associate time in Chemtura, with people's memories, they would bring it to my attention.

So I think the question is, is that something, in your view, that I should do by a ruling now, or query whether it's

something that would be -- if we're going to lay out a rule for the future for the financial community or bankruptcy community to follow, whether it might be better for the Court to implement guidelines on that subject, or a local court rule, rather than me kind of issuing a ruling -- hopefully it wouldn't be arbitrary, but it wouldn't have the benefit of case law -- for the financial community to know going forward?

MR. WILLIAMSON: Your Honor, I think either course would be appropriate and productive. But one of the reasons we don't have a decision from the Second Circuit or from the district court is precisely because these issues haven't been addressed explicitly in a somewhat adversarial setting.

Now, you used the world provocative, Your Honor. In some ways, I think that's part of my assignment, is to raise issues in a way, civilly, respectfully, and professionally, that need to be raised in the context of a case that is not only huge in terms of billions of dollars; but everyone in this courtroom knows that the decisions of this Court, this particular Court, don't apply outside the four walls. But it would be naive to think that this case and the conduct of professionals, fee examiner, the Court, the U.S. Trustee, are not being watched across the country, because they are.

And I don't happen to think that lawyers in New York have a corner on skill or wisdom -- or judges for that matter. But I do know that there are awfully sophisticated judges in

this city, and awfully sophisticated lawyers who practice before this Court and other courts.

The other reason that I hope the Court doesn't keep itself up at night -- tonight, or the professionals, is because we've agreed, and I believe the U.S. Trustee concurs, that every single professional should get half of the amount held back, right now. And Mr. Stenger, the CEO for Motors Liquidation, is in the courtroom. If he brought his checkbook with him, he can write checks to every single professional for half of the amount of the holdback.

THE COURT: Pause, please. Are you talking about the delta between the amount authorized on the interim fee order that was entered early in the case, as compared and contrasted to the ten percent holdback that Mr. Velez-Rivera and his colleagues have asked me to do? Or in other words, I was under the impression that the U.S. Trustee wants a ten-percent holdback of everything. But -- and I'm not sure if you're talking about something where you're not on the same page with the U.S. Trustee's Office or whether there is another delta between the amount whose payment was authorized without fee app, on a monthly basis.

MR. WILLIAMSON: Your Honor, I think we're on the same page, but I will not speak for the U.S. Trustee, only for myself. If the XYZ firm has received eighty percent to date, and that eighty percent leaves twenty percent or 500,000,

simply to pick a number, unpaid, my belief is that half of the unpaid amount can be paid today. And part of the reason for that is simply because this Court's jurisdiction over fees is forever. And it continues from this hearing to the next to the next and to the final.

THE COURT: I think I'm with you now, Mr. Williamson, but forgive me if I take a minute to make sure. So subject to the particular objections you've made, an attorney -- if I, by way of example, were to have overruled every single one of your objections -- something which isn't realistic, but which I say for the sake of discussion -- a professional could be brought up to ninety percent, the way you see it?

MR. WILLIAMSON: Correct.

THE COURT: Okay, continue, please.

MR. WILLIAMSON: Let me turn, now, Your Honor, to what may be the most contentious point of disagreement, and that's the five-percent recommended adjustment. First, let me be clear that all of our language in this courtroom is precise. It's not across the board. It does not apply to FTI. It doesn't apply to the Claro Group. It applies to the firms -- one for the debtor, one for the committee, that have requested the most substantial amount of money. And there are three bases -- generic bases for the recommendation.

The first is that other professionals in this case have given discounts. The second is that in terms of blended

hourly rates for partners and associates, there is a dissonance between those two firms and all of the other law firms. We can provide specifics. I didn't think that was appropriate in this setting. But there is a significant difference. The third is really the nature of the case.

And counsel for the debtors and counsel for the committee have spoken eloquently about it. I have said countless times and no doubt will continue to say, we weren't here, and we can't fully appreciate the dimensions of this case, particularly in the first six weeks. But we have done everything humanly possible to factor all of that in. And the fact is, this case does involve the American economy. It does involve, directly or indirectly, the American taxpayer. And the odds of an administrative insolvency, which certainly go into my rates in a Chapter 11, shouldn't be a factor here. And if they are, we can make an adjustment later. But it strikes me that if some firms, whether motivated by altruism, self-interest, are giving a modest discount, that it -- that's part of the marketplace too.

Now, the debtors' counsel, the committee counsel, are paid significant hourly rates and they deserve every penny of those rates defined by the market. But the market includes discounts. And we're all aware of at least one other mega-case, Lehman Brothers, where discounts are also given, according to media reports. And it simply struck us, in trying

to make one of those forest decisions, that that warranted the Court's attention. That was something that the Court ought to give some thought to. And again, we hope that the Court's decision -- I'm sure it will be thoughtful, whenever it's rendered -- but if the Court might take some time with this, it would benefit everyone. Again, not from a precedential standpoint, but in terms of what people, lawyers, judges, throughout this country think when they look at the disposition of this case.

It's been a stunning success so far. I have no reason to doubt that six months or six -- I won't say six years -- six months or longer, when we're done, that it will continue to be a stunning success. But the issues here, Your Honor, involve very mundane matters: the Trustee guidelines, the local rules. And I really think that's what is at stake here. And that's where our focus ought to be.

In the summary pleading -- thankfully only five pages -- that we filed on Monday, Your Honor, we raised eight generic issues. These are threads that we think apply -- forgive the phrase -- across the board. Let me just tick them off, because some we've already addressed. The first is the question of retainers. Twenty-six million dollars of estate money is being held by professionals. In this case, we don't see a basis for that. And at least one firm, the debtors' counsel, seems to have agreed with that. The ten-percent

holdback. That's been discussed. Summer associates; been discussed. Electronic research; been discussed.

The amounts charged for retention and fee applications. Obviously that was a concern of several professionals, and obviously it's something we looked at, because it lends itself to a quantitative analysis. And we learned, Your Honor, that the range -- the percentage range was two to twenty-three percent in terms of time spent on retention and fee applications. Now, I'm sure the Court is aware that in another large case the fee examiner has recommended a flat one-percent ceiling. I happen to disagree with that.

THE COURT: Pause, please, Mr. Williamson, because I've been thinking about that, and the issue is kind of in our face, as noted by Mr. Seidel of Butzel Long. And it appears to me that, subject to the usual reasonableness scrutiny, there is what we can roughly think of -- and I wouldn't suggest that it's more than rough -- as a fixed cost for getting oneself retained or getting one's retainer approved by the Court, and to a lesser degree but some, a filing of fee app. I suppose that the more work you do, the longer you fee app has to be. But there's still a fixed cost element of that.

And Mr. Seidel, in his comments, suggests to me that a court has to look at it with due regard for the fact that an element of the work is a fixed cost. And impliedly in what he said, because I suspect that his opponents in that billion and

a half dollar avoidance action are going to put him through his paces, he's going to have to work the matter a lot more in the next fee period or the one after that, than he's going to have to do now.

How do you think a guy like me should deal with the fact that those aspects do have a fixed cost element? And what's fair to the professionals and the estate in getting my arms around an issue of that character, if I haven't stated the question, too vaguely?

MR. WILLIAMSON: This is what I would say, if I were in your seat. I would say you make a fair point, but the fee examiner is understandably concerned about the amount of time that's being devoted to this. And I will defer the fee examiner's objection until we see the course of this.

And by the way, Your Honor, that same point goes to Evercore; it goes to FTI; it goes to every professional that has a hybrid fee arrangement. Because we can't tell today whether Evercore's services warrant the compensation that was initially awarded. And the Court knows full well why I say initially. Because I think at the end, everyone -- fee examiner included -- is subject to hindsight. Not because I want it, but because that's what the code provides.

But, you know, Your Honor, you've put your finger I think, on a very important point, that again, becomes generic here. It's not just about checking for conflicts or doing your

fee applications or keeping time. Of course we need to be careful with conflicts. Of course time needs to be kept in tenths of an hour. The question, again, is who pays for it? That's the real question here.

I would like nothing better than to avoid a discussion of electrical charges, dry cleaning, first-class airfare, car services. I'd like to ignore all that. But number one, the U.S. Trustee's guidelines won't let me ignore all that. But I suggest that it's subsumed in this larger question of overhead and administrative expenses. Is the estate, under the reasonable and necessary standard of the code obligated -- is it fair to the estate that it should pay those kinds of discretionary expenses?

At the risk of being hyperbolic, I'd compare and contrast the services that the debtors' lead counsel provides in presenting argument to this Court with a charge, undocumented, for beverages and other services at a 363 meeting. I mean those are worlds apart. We're not debating the reasonableness and value of the first set. But it would be nice to have an invoice that says more than "miscellaneous" for the second.

And again, if we're on the subject of keeping track of time and justifying your fees and expenses; if that detail were provided in the first interim applications, Your Honor, we wouldn't have had to write the memorandum, in our view, and we

wouldn't be here today discussing those issues. We first started raising the issues and concerns with the professionals in mid-March, six, seven weeks ago. And in almost every case, we have had a dialogue that in almost every case has been civil, professional and productive.

In many instances, the professionals responded to our inquiries by giving us information that, quite frankly, should have been in the fee applications to begin with. And I know that other fee examiners have encountered this same phenomenon, practice, tendency. And the question which I know bedevils the U.S. Trustee, is what to do about that.

Now, issues have been raised about our recommended reductions -- fifteen percent, twenty-five percent, ten percent. Could it be twenty percent? Absolutely. Could it be ten percent? Absolutely. But, Your Honor, unless there is some consequence, we are left with two alternatives. And the two alternatives are: a line-by-line analysis, which we do have precedent on, and the Court says that's a waste of your time; and the other alternative is to basically say, you know, you're great lawyers, you're good men and women, it's an important case, if that's what you say it was, that's what it was. But again, we run into a headlong collision with the Trustee guidelines, with the local rules of this court, and in some cases, with clear precedential decisions.

Now, I think I have taxed the Court sufficiently with

broad issues. Each of my colleagues could respond to specifics -- various specifics on Kramer, on FTI, on Claro. But I think we said essentially what we had to say in our reports, Your Honor. And remember, each of those reports followed a tennis match: tell us about this; okay; tell us about that; okay; and here's a report. And one of the reasons we did fourteen was so that any professional who was unhappy with what we said and you decided, has something they can take to the district court or take to the Second Circuit. Because speaking as a practitioner, especially one that's been immersed, now, for four months in this case, I think guidance is needed.

You know, the Claro Group, just to use the last example, obviously not used to bankruptcy practice and Trustee guidelines. The creditors' committee counsel, just to use another example, in the first six weeks, wasn't as precise as it might have been. I think we can stipulate to that. But at some point, Your Honor, the guidelines apply to all cases or they don't. And when we went through these, again, with the assistance of Stuart Maue, believe me, we gave the benefit of the doubt everywhere we could. We recognized the exigencies of this case. But when an entry says, "Attention to file, 6.2," it doesn't offend me personally, but it doesn't comply with the guidelines.

And so rather than suggesting that the Court

microanalyze this, we said we think fifteen percent is a fair adjustment. And if there is no consequence, Your Honor, if there is no consequence to not complying with the guidelines, then when we're here on the second interim applications, I will be saying gee, Your Honor, we still have this problem; block billing, incremental time records, invoices that don't appear to have been vetted appropriately. That doesn't mean that the electrical work at Weil, Gotshal was improvident but it means there has to be some explanation. And with four of the professionals as the Court knows, we have adjourned the first to the second, so that, you know, putting aside whether all of us should have started this earlier so that we can continue the dialogue. Four professionals took advantage of that offer that we made in general; others didn't, which is fine because we had to come here.

I want to walk out of here perhaps not literally but in a week or two whenever the Court's schedule permits with a written decision that at least addresses some of these larger points. If debtors' counsel is right, there should be no holdback. The Court should tell us. If committee counsel is right, that all of the value that it brought to the case should not be undercut by imperfect recordkeeping; fine, tell us that. If administrative overhead fairly includes first class airfare, tell us that.

So, I will conclude on this note. We've heard a lot

today about context. I think context is extraordinarily important. We've heard a lot today about the market for professionals. I think the market and this, the Second Circuit has told us, is important. But the market imposes limits, as well as freedoms. And again, I don't pretend to have a corner on wisdom, least of all when it comes to legal fees, Your Honor, but I do think it's fair to conclude after four months immersed in this that we would all benefit by some additional guidance in the context of a case in which the professionals have done an extraordinary job and the beneficiaries have been this country and its taxpayers. But extraordinary service is not a free pass on complying with the guidelines and the rules.

So, I will stop. I think in a rebuttal, if we have time for that, we can address any of the, what I will call micro issues but I think I have covered generically the points that I hoped to bring to the Court's attention.

THE COURT: Fair enough. Do you want to yield to any of your colleagues to deal with any of the other things before I get other folks an opportunity -- oh, I guess the U.S. Trustee would be next but --

MR. WILLIAMSON: Your --

THE COURT: Before you and your firm sit down, do you want to invite any of them to speak or me to invite any of them to speak?

MR. WILLIAMSON: Your Honor, I would like to -- I

think that the amount of time they will take is three minutes or less. Let me just explain, one of my colleagues focused on the law firm applications. One of my colleagues focused on the non-law firms and one of my colleagues because of the magnitude of the application focused on Weil, Gotshal.

So I think that I have addressed the Weil, Gotshal issues sufficiently. So at that point, Your Honor, I will ask Katherine Stadler, who focused on the law firms other than Weil and then Carla Andres who focused on the non-law firms. And I am sure they kept good notes professional by professional.

THE COURT: Okay. Ms. Stadler, do you want to come on up then please.

MS. STADLER: Katherine Stadler, Godfrey & Kahn appearing for the fee examiner. Thank you for -- I'll try to stay in three minutes.

As Mr. Williamson said, we divided the work at our firm in the manner that he described. I worked primarily on evaluating in detail the applications of the non-lead debtor counsel law firms that included Kramer Levin, Baker & McKenzie, Jones Day, Jenner & Block and Honigman Miller. All but one of those fee applications has been either resolved, as you heard from the counsel today or deferred, so that leaves Kramer Levin and the creditors' committee counsel.

The points made in response to the fee examiner's objections fall generally into three categories. The first is

the committee counsel taking umbrage with the fee examiner's characterization of the committee counsel's role. The second is in -- as Mr. Williamson has referred to them, micro areas, specific sub-areas of the retention. Whether or not the fee application demonstrated the reasonableness and necessity of the work, not whether the work was reasonable or necessary but whether the fee application as is required to do under the code met the applicant's burden to show the reasonableness and necessity. And the committee takes issue -- committee counsel takes issue with our continued confusion at the end of this process of being able to decipher from the application and the supporting materials, whether that burden has been met.

And the third has to do with the guideline issues, the block billing, the vague billing. And I'll address those very briefly in turn. With respect to the scope of the retention, I think Mr. Williamson has addressed it adequately in the context of the whole case. The committee role is clearly defined in the code. It is not so clearly defined when a case operates the way this case operated. We all know how committee counsel works to gather constituencies together for purposes of creating classes to vote on a plan of confirmation, a plan of reorganization and a confirmation of such a plan.

We're less clear on how that's supposed to work in the 363 sale context. And that is the basis for the questions that we've raised; not challenges per se, not necessarily even --

you know, Mr. Mayer seems to think that we think they shouldn't have done anything but sit there and read memos and certainly that's not true. The bulk of the charges in the Kramer Levin application aren't objectionable or to the extent they are objectionable, they're excusable under the circumstances in the case, at least in the fee examiner's view.

But there are a couple of areas where the question arises and because we're dealing in an arena of cases that aren't like anything we've seen before, we can't look back and say oh, yeah, this is what a creditors' committee counsel is supposed to do when there's a giant 363 sale that has to happen in six weeks. We don't know.

And as the fee examiner stated in his own remarks, we view his role in this proceeding as illuminating issues like that so that if the trend of 363 sales instead of Chapter 11 plans continues, we all have some basis for knowing what a creditors' committee is supposed to do and what a creditors' committee counsel's supposed to do. So that fits into the global picture points that Mr. Williamson made.

With respect to the sub-issues again, it's a question of burden; the burden being on the applicant not on the fee examiner to decipher what was provided in terms of value but on the applicant itself to demonstrate that value.

And on the micro issues of block billing and vagueness, we heard some feedback from Mr. Mayer that perhaps

he didn't have enough time and as Mr. Williamson said, we began this dialogue with the professionals more than a month ago. And so I would just point out that to the extent that there was more time needed, you know, Kramer Levin had the same option that all of the professionals had to ask for that and to defer these proceedings. And again, I would revert to my comments about the burden. It's their burden to go forward with the fee application today and they've chosen to do that. They had the option not to. So to the extent there's any constraints associated with timing, I think it's not appropriate to give them a free pass because of that.

THE COURT: Okay. Thank you, Ms. Stadler. Come on up, please. Is it Ms. Andros (sic)?

MS. ANDRES: Andres, Your Honor, Carla Andres, Godfrey & Kahn. Your Honor, as the fee examiner explained, we broke these types of fee petitions into different categories and I had the non-lawyer professionals. So specifically, I will limit my comments here today to the Butzel Long fee application, FTI fee application.

THE COURT: Well, Butzel is a law firm or are you talking about non-lead.

MS. ANDRES: I'm sorry. No, Your Honor, you're absolutely correct. Butzel is a law firm and that was one that at the time when we divided the fee applications out, Butzel was a smaller piece and I did do the review for Butzel law. So

although I have the non-lawyers, I do have that particular law firm and I had Lowell Feld also, which I have believe has been withdrawn, that fee application. And finally, Claro.

Starting with Butzel because it does have a unique issue that Mr. Seidel presented to the Court today, I won't spend much time on that for the Court because I believe the parties have adequately addressed that. The retention and compensation issues have been addressed minimally by a few courts. We have looked at Lehman to see what's been done. We looked at the Enron case to see some things that have been addressed.

But generally, we're left in a vacuum and I think that it's very interesting to hear Mr. Seidel's comments because certainly there is some level at which it costs to get retained and I certainly agree with the Court's comments on that front.

I also recognize the fee examiner's position that on a going forward basis, that may perhaps be the best way to evaluate the current objection as we look at how retention and compensation fit into the total picture for Butzel Long. So without withdrawing the objection, I think that may be an appropriate way to deal with it, is to defer it.

FTI, the comment that I would have in response to Mr. Eisenband is simply to note that in connection with FTI's flat monthly rate, there was certainly a period of the retention that was hourly. There was a period that is monthly and then

there is a separate completion fee.

Mr. Eisenband has referred to the fact that he perceives a flat fee as being something that is a flat fee. It's a monthly rate and that there shouldn't be commentary on hours that are expended within that time period, whether they are in one category or another and whether there's a great deal of hours or a few hours but I would simply remind the professionals in this case that the order of retention for FTI required FTI to keep track of their time within half hour increments during the flat monthly periods as part of the fee examiner's ultimate review for reasonableness for the fees.

Again, I personally did speak with Mr. Eisenband and some of the representatives of FTI. They were very cooperative in discussions along the way and certainly a valid point that was raised was well if we have a month where we don't have a great deal of billable work but we have a month or several months where the hours that we expend would result in a very low hourly rate for us.

And towards that point, again this may be a matter in which it's appropriate to be looking long term at how things fit into the reasonableness of fees on a final fee petition or any larger period of time than an interim billing. I don't know that that necessarily applies in connection with the retention and application issues that we've raised but it certainly is a consideration I think on a going forward basis

for FTI.

Evercore, just a quick comment there as well, the question here is that Evercore has been retained for a forty-day period of time. Evercore has performed all of its services under that retention. Evercore has also been paid for the services that they've been provided with the exception as Mr. Walsh had stated of a remaining approximately 4.3 million dollars which is to be paid in connection with the entry of an order confirming a plan that meets particular qualifications.

At this point in time, it is difficult for the fee examiner to review the reasonableness of Evercore's fee overall without seeing how this case is completed. So in connection with Evercore, we would simply ask to have that hearing adjourned until such time as we see final fee applications. I would point out that FTI, Evercore, and AP Services are all three different professionals who have completion fees, success fees, bonus fees, whatever a party would like to call them, that are tied to either the 363 sale or a confirmation order or some hybrid of the two.

THE COURT: Who was the third besides AP Services and Evercore?

MS. ANDRES: FTI.

THE COURT: Continue, please.

MS. ANDRES: And finally, the last and perhaps the most detailed response is simply in connection with the Claro

Group. Mr. Deems was on the phone today and I had a fair amount of interaction and I can tell you that between the date that we sent the draft report to professionals and the date that the fee examiner's report was filed with the Court, Mr. Deems and I were able to work through a large number of issues.

So the initial suggested disallowance for Claro was even larger than the current one. He was very cordial. We were able to work through a number of those issues. As an example, at least one of the issues which was based on clerical and administrative costs which under the guidelines are not compensable, we had identified an amount of 6,000 dollars, give or take, and after my discussions with him, we voluntarily reduced the suggested amount to a fifty percent disallowance.

And that was just based upon really an entirely subjective decision of discussing with Mr. Deems where the Claro Group was, the fact that they hadn't been involved in these cases and how things were and were not detailed in their time records. There's a number of areas that he did provide supplemental information. We were able to reduce those.

Most recently, as he indicated, we did review some further information from him and I sent him an e-mail last night or this morning, I am not sure which, so that the new request is a reduction in fees of $34,363.43 and expense of $450.59.

THE COURT: So you're still asking for a reduction of

about 35,000 bucks.

MS. ANDRES: That's correct, Your Honor and as Mr. Deems indicated on the call, the lion's share of that is, in fact, based upon that time increment issue and I will raise that because I think it sounds hyper technical and I think that a number of people have been upset by that adherence to the guideline. At the same time, I will point out that what we've looked at in these cases is how much of an individual or a professional's time was billed in half hour increments as opposed to tenth of an hour increments. And in many cases, we would find that there were forty percent, sixty percent of a certain timekeeper and it appeared that there would be a rounding error which could be up, could be down, admittedly from the fee examiner's perspective, we don't know that. The Claro Group -- we asked for the reduction here which I will point out is a fifteen percent reduction of approximately 153,000 dollars' worth of time that was billed by seven timekeepers. Of those seven timekeepers, ninety-five percent of their hours were in half-hour increments.

So certainly we leave to the Court's discretion whether that's an appropriate recommendation or whether the Court, you know, wants to grant some sort of leniency towards the Claro Group being a group that isn't commonly in bankruptcy and we do recognize that that's a different issue for non-attorney practitioners.

That is a brief summary of the issues that were raised in connection with the groups that I evaluated. As I mentioned, Lloyd Feld had withdrawn theirs. The other two environmental groups were Brownfield and LFR, both of whom elected to adjourn so that they could continue the dialogue with further information.

THE COURT: Okay. Thank you.

MS. ANDRES: Thank you.

THE COURT: Any of your other folks, Mr. Williamson?

MR. WILLIAMSON: No, Your Honor. I think that's sufficient.

THE COURT: Okay. Mr. Velez-Rivera, will you take the lead for the U.S. Trustee's Office?

MR. VELEZ-RIVERA: Andrew Velez-Rivera for the United States Trustee, Your Honor. I have, I think on my sheet four items to address, most of which you've actually heard today. So most of what I will be doing is underscoring.

In terms of process which is my first point, Your Honor, I would like to identify for the Court that the fee examiner's review has been independent of the review of the fee applications that my office has done. We've reviewed them, as well. We --

THE COURT: You did? Because I had kind of hoped that by having the fee committee or a fee examiner, I could relieve burdens on your office.

MR. VELEZ-RIVERA: You did, Your Honor.

THE COURT: That was what I thought I was approving when I approved the various stips and orders we've entered over the years to do that.

MR. VELEZ-RIVERA: We did -- you did, Your Honor. You did relieve a great burden from my office but nonetheless, the review that we undertook, it's fair to characterize it as more abbreviated than we would have in other cases for sure.

What we did not do, as you could see from the pleading we filed was abdicate entirely. My client is statutorily charged with reviewing fees and we did do that in this case in very general terms. What the trends, then the patterns that the examiner found, we also found. So we didn't burden the Court with anything lengthier than with what we've presented.

My second issue, Your Honor, is with respect to the holdback. I will be very brief on that. You've heard Mr. Mayer and you've heard the importance of the preservation of costs in this case and its implications upon the return to unsecured creditors, hopefully at the end of the day. We echo that.

We also note that in other cases in this district including Lyondell, Dana and Chrysler, these same sorts of holdbacks, they're car cases and car supplier cases, Your Honor, with the exception of Lyondell. This is what we do.

Your Honor, my third point --

THE COURT: Could you refresh my recollection, Mr. Velez-Rivera, as to what I did vis-a-vis holdback in Lyondell? I would be surprised if I had provided for a zero holdback but I wonder whether I provided for the full ten percent or even twenty percent or I provided for a five percent or something of that character.

MR. VELEZ-RIVERA: Your Honor, I don't have the number with me. I am told that Your Honor instituted a partial release. I just don't have the number with me.

THE COURT: But did not go far -- so far as a zero holdback.

MR. VELEZ-RIVERA: I'm led to believe that that's right.

THE COURT: Continue, please.

MR. VELEZ-RIVERA: Your Honor, my third point is my need to express the concern of my office with respect to the de facto suspension of the guidelines. In certain instances, despite the size and the complexity of this case, it was no different than many others with respect to the initial rush that happened at the beginning.

Our guidelines, including the Court's guidelines don't really provide exemptions for busy periods and for traffic jams. It would be detrimental to the fee process if our guidelines would be effectively suspended during busy traffic periods, Your Honor. We're very concerned about that. It also

bears remembering that at the time of applying to this court for their retention, virtually every professional in this case and others says I will comply with the guidelines. And then we have the problem.

Your Honor, finally Ms. Adams has asked that I underscore for the Court that she views the five percent reduction that we're talking about today as entirely appropriate. She doesn't view it as arbitrary. Others have taken reductions in this case and again, every dollar -- this is her view -- every dollar that we could save at the top and Mr. Mayer said it as well, eventually goes to creditors. That's all I have, Your Honor.

THE COURT: Very well. Thank you.

Mr. Mayer, I was going to give you a chance to reply later but if you would like to do it now, I won't say you can't.

MR. MAYER: Thank you, Your Honor. I just -- I don't wish to take any time to reply to what the fee examiner said. I think we've hashed over that ground. Just a correction; the money that is saved in this case will go to creditors if there isn't room in the cash to pay all of the administrative expense and priority claims, otherwise it does not go to creditors as Your Honor knows that it goes back to the treasurer.

THE COURT: Okay. Thank you.

Mr. Karotkin, reply? Try to keep it as brief as

circumstances permit.

MR. KAROTKIN: Stephen Karotkin, Weil, Gotshal & Manges. I will be very, very brief, Your Honor; just a couple of items.

Number one, with respect to the discount and the fee examiner's, for the three reasons he gave for the discount, frankly, Your Honor, none of those reasons as far as we are concerned, compel the granting of the discount in the circumstances of this case. The fact that other professionals out of town may have given a discount is irrelevant. The fact that the blended hourly rate may be higher than our blended hourly rate. I am quite sure, although I have not done a study that that is an account of rates in New York being higher than outside of New York, as opposed to which I am very, very confident of our firm rates being higher in the New York market than other firms. I don't believe that is at all true and, in fact, I know of several firms in New York including your former firm where there are attorneys practicing bankruptcy law who bill significantly higher than Harvey Miller.

THE COURT: Fair enough, Mr. Karotkin but I have been away from my former firm for ten years and I like to think that I do my job now with a more global perspective.

MR. KAROTKIN: I am just pointing it out, Your Honor.

I think something that Mr. Williamson said -- I'm sorry, the fee examiner said during his remarks, he said he

wasn't here at the beginning of the case. He wasn't here to evaluate what happened. He certainly has a good idea as to what happened and he explained how impressed he was with what happened at the beginning of the case.

But nevertheless in that context he still thinks a five percent discount is appropriate. Again, we vehemently disagree with that. And I will tell you, Your Honor, if this were not a bankruptcy case, in a situation like this, the results achieved in the remarkable period of time, we would have sought a premium and had been paid a premium outside of bankruptcy. And I think that's relevant here. We're not seeking a premium, of course, but we certainly don't think a discount is appropriate.

I think I have addressed the holdback. I don't believe a holdback is appropriate here. There is no chance of administrative insolvency. If Your Honor has a policy otherwise, obviously we'll abide by it. And Mr. Rivera indicated compliance with the guidelines. As far as my firm is concerned, we are not seeking an exemption from the guidelines. We believe we have fully complied with all of the guidelines.

And lastly, and I really don't want to belabor this but with respect to the hotel charges and the electrical bill -- first with respect to the electrical bill, I furnished to the fee examiner's office an itemized bill from Star Delta Electric which is fairly detailed and I am happy to hand it up

to the Court. And the funny thing is when Mr. Smolinsky just took a look at it, he said to me that's more detailed than any bill I got when I did work at my house. And I would like to hand it up to Your Honor.

And we also did furnish him five pages of bills from the Hilton Hotel with respect to the rooms and I will leave it at that. I am happy to furnish them to the Court.

THE COURT: I take it you've already given them to Mr. Williamson or one of his partners.

MR. KAROTKIN: Yes, sir.

THE COURT: If you want to hand them up to me, you may.

MR. KAROTKIN: Thank you.

THE COURT: Okay.

MR. KAROTKIN: And as to the remaining items, we've addressed them and are happy to rely on our pleadings.

THE COURT: All right. Fair enough. Unless somebody has something super, super compelling to say, I am not inclined to get any further reply from anybody other than Kramer Levin at this point. Mr. Mayer, do you want to supplement what you said?

MR. MAYER: Only so much, Your Honor, at the risk of incurring the ire of my coprofessionals, I was not expecting to wait around for you to render a decision today. There's no emergency here. We hope to receive your decision in due

course. That's all.

THE COURT: Well, folks, I have the practical problem that I have many, many cases on my watch and I don't know if I have the luxury of taking still another one under submission. Every six months I have to report to the AO on matters under submission and my thought had been, it may take hours, but for you to get a ruling late this afternoon or this evening.

Mr. Williamson, I understand your desire for a precedent. If I can dispose of something like ten other matters that I have sub judice, I could give you a written decision confirming and amplifying on what I tell you orally but I think that just like they told me in judge's school, I got to get my work out and I think the better course of action is to dictate something. It could take me an hour or two to dictate but sometime before -- hopefully before midnight tonight. Now you guys can decide whether you want to wait around for it or not but that's my inclination.

However, to keep things moving forward, I want to move to the remaining three things that I have on the calendar and without shortcutting due process rights, I am going to give you my tentatives, California-style on those rulings and give you folks a chance to be heard on them.

On the Maue retention, and if I am mispronouncing it, that's because I only know what I read in papers. Nobody's spoken to me orally. My tentative, subject to your rights to

be heard is by reason of the supplemental submission having been provided to me after I issued the endorsed order, to grant the motion to the extent that Maue's services would carry us through the second interim fee app round and then to do a stop, look, and listen to see whether we're getting our money's worth by reason of the Maue firm's services.

I fully recognize that if I were to do that, I would more than double the cost to the estate that we had originally budgeted for. And frankly, that's a matter of concern to me but my tentative, subject to your rights to be heard, is to hold my nose and allow the fee examiner to do his job but to have a closer look at whether we're getting our money's worth from that firm's services thereafter.

Mr. Karotkin, I am going to give you a chance to be heard.

MR. KAROTKIN: Can I just impose -- that's acceptable to us if it's acceptable to the fee examiner. So maybe we can just dispose of that. I'm sorry to interrupt.

THE COURT: Well for that purpose, I guess an interruption ain't so bad. Mr. Mayer, I don't know if you share Mr. Karotkin's view or whether you want to be heard on that.

MR. MAYER: I have no difference with the debtor on this point.

THE COURT: All right. Mr. Williamson, is that

agreeable to you for this much of what I've said?

MR. WILLIAMSON: It is.

THE COURT: Okay. On the adjournment of the second round, my tentative is also to grant the fee examiner's request on this. I think we're in a zone where you guys are going to agree to disagree on things and you already have, and chances are you are in the future and I am going to have to decide things now and going forward but as annoying as it may be to professionals who have to wait to get paid, their pain has been ameliorated in part by the monthly fee order. And I think that the system -- confidence in the system, if you will, requires allowing the fee examiner to do his job. So my tentative subject to people's rights to be heard is to grant the fee examiner's adjournment application.

Mr. Karotkin, you're rising again.

MR. KAROTKIN: Yes, again. Hopefully just -- we obviously will not object to that.

THE COURT: Okay.

MR. KAROTKIN: We do not need to be heard. I assume, Your Honor, that we will be able to get a convenient date in June in accordance with the request of the fee examiner.

THE COURT: I think I can give you that, assuming as I do that we can get it all done in a day or less of court time. I think that however I rule today on disputed matters, my view is there's going to be a one-bite rule, kind of like you learn

in freshman torts and then I am going to hold people to a higher standard once they know what I am going to be ruling.

Now it is true that the second interim fee apps were done when people didn't have the benefit of my thinking but -- and I am going to take that into account and if there is a third round of fee apps, I am especially going to take failures to comply with my statements of my expectation into account. But I would hope and expect that the second round will be shorter than the first and the third round is going to be shorter than its two predecessors.

My third tentative which is on the expansion of the role of the fee examiner -- well it's denominated as clarification and I think a clarification is appropriate but upon clarification, I am of the view that I am going to deny subject to your rights to be heard, a change in the fee examiner's role.

My view on that, subject to your rights to be heard, is that the fee examiner here is going to perform a function similar to the fee committees that I had in place in Adelphia, Global Crossing, I think and I think I did the same thing in Lyondell but I can stand to be corrected in that regard.

I see and I understand and respect Mr. Rivera's perspective. The role of the fee examiner doing something where I had hoped to reduce burdens on the U.S. Trustee's Office which was to facilitate consideration of fee apps. On

other matters, subject to your rights to be heard such as whether somebody is retained in the terms of that, my tentative folks is that that is a judicial responsibility and that's what I got to do. And my tentative, but I will let you, Mr. Williamson, be heard or any of your partners or colleagues, is that I will give you as my earlier rulings indicated, the support you need to do your job and what I understood to be the appropriate role of the fee examiner in this case and I will give you the time to do it to insure that the job is done right but I am not of a mind subject to your rights to be heard, to change the nature of your responsibilities.

But if there is a desire for oral argument on that third tentative, I will give anybody in the room that right most significantly, of course, the fee examiner.

MR. WILLIAMSON: Your Honor, my response will be muted. We obviously have no difficulty with the Court's order. The genesis of it was that relatively early on as we were seeing applications to retain professionals, simply reading them on their face raised questions that we thought and continued to think will have ramifications when we are before you on another day.

So we have no difficulty with the Court's ruling. We would simply keep in mind that six months from now if we say you're twenty percent increase in rates we object to and we would have objected to it earlier but our role is limited to

review. So we have no difficulty with that, Your Honor.

THE COURT: Fair enough. Is there a desire by anybody else to speak after Mr. Williamson spoke?

MR. MAYER: No, sir.

THE COURT: Okay. Fair enough.

MR. WILLIAMSON: Your Honor, I have one practical question.

THE COURT: Yes, sir.

MR. WILLIAMSON: For those of you that -- for those of us that aren't frequently before the Court, is it necessary or desirable to remain until the Court issues its decision?

THE COURT: It's going to be your call. My hope is that I could have something for you by perhaps 4 o'clock. If you want to detail one of your partners or colleagues to hang around and be excused, it goes without saying that you or anybody else in the room can. It's more burdensome obviously to wait around if you're an out-of-town professional and I will give people every courtesy in that regard.

But I don't think -- for the same reason you wanted me to take it under submission and to write, Mr. Williamson, I don't think I should rush a dictated ruling and I am going to do it, taking the amount of time it takes to give you people confidence that I've thought it through.

THE COURT: Mr. Mayer?

MR. DEEMS: Judge, this is Doug Deems with the Claro

Group. For those of us on the conference call, should we call back in, should we stay on the line? Do you have any suggestions?

THE COURT: Well I would advise you not to stay on the line but I would suggest and frankly, I don't get into this in that level of detail, to see whether CourtCall or whoever we're using can provide a line for you folks to perhaps call in on say fifteen minutes' notice or something like that.

And if by the way anybody wants to do that from a cell phone, as long as the cell phone is in a listen-only mode, because cell phones can be disruptive of my courtroom otherwise, I wouldn't object to that.

I want to give you folks courtesies in terms of opportunity to know my ruling but first and fundamentally, I have to get the ruling done and in a way that it's satisfactorily thought through.

Mr. Mayer?

MR. MAYER: Your Honor, if I may? It would, I think, be a benefit to everybody in the courtroom to actually stay, if your clerk could send an e-mail notice that you're prepared to render a ruling and we could then dial in, and that way we would be able to do so remotely and not that I am suggesting you would need more time than you had budgeted, but if it turned out you wanted to, the clerk could let us all know that we should dial in tomorrow or --

THE COURT: I think that's an excellent idea and I will either have my courtroom deputy or one of my law clerks do so. Just be sure that if you like to take yourself up on Mr. Mayer's suggestion, that you've given my law clerks the necessary e-mail information, so that we can do that.

MR. MAYER: Thank you, Your Honor.

THE COURT: All right.

MR. WILLIAMSON: Your Honor, if I may --

THE COURT: Yes, sir.

MR. WILLIAMSON: -- two quick conclusory points.

THE COURT: Yes, by all means.

MR. WILLIAMSON: First to correct the historical record, I believe I was given creditor blame for the 1978 code.

THE COURT: I think it was the review commission which the lobbyist then ignored.

MR. WILLIAMSON: Right. With respect to Ken Klee and Rich Levin, I probably want to acknowledge their role which was substantial. And secondly, simply to express my appreciation for the Court's tolerance on the volume of materials that we've submitted. I make no apology for it but I do express appreciation. Thank you.

THE COURT: All right. Well thank you very much.

MR. VELEZ-RIVERA: Your Honor, I have one factual matter.

THE COURT: Mr. Velez-Rivera and then Mr. Smolinsky or

Mr. Smolinsky and then Mr. Velez-Rivera. He got up quicker.

MR. VELEZ-RIVERA: He took the stage. I will address the Court from here, if allowed.

THE COURT: Well pull the microphone up to you Oprah Winfrey style.

MR. VELEZ-RIVERA: I am told, Your Honor, that in the Lyondell case, that on the first round of the interim fees, Your Honor withheld twenty percent and I am told that at the second round, Your Honor withheld five percent.

THE COURT: Thanks, I appreciate that. Give me a second though. That's worthy of taking a note. Mr. Velez-Rivera, I don't know if you know this but if one of your folks could help you, too, how far along in Lyondell did I cut it down to five percent and in particular, was it before or after the creditors' committee and the secured lenders developed a little more piece in the valley?

MR. VELEZ-RIVERA: I don't know the answer to that, Your Honor. I wasn't personally involved.

THE COURT: All right.

MR. VELEZ-RIVERA: We sent a quick e-mail in response to your prior query. That's beyond my knowledge at the moment but we could probably get an answer to that.

THE COURT: If people aren't offended due process-wise, I wonder if you can send an e-mail to the Gerber chambers with copies to debtors' counsel, creditor's committee counsel

and the fee examiner or his designee noting that fact without argument.

MR. MAYER: Well, Your Honor can take judicial notice. I don't think this is a problem.

THE COURT: Okay.

MR. VELEZ-RIVERA: We will respond by e-mail nonetheless, Your Honor. That's fine.

THE COURT: Thank you.

Mr. Smolinsky?

MR. SMOLINSKY: Your Honor, you have efficiently gone through the calendar today. There was one more matter on the calendar that hasn't been addressed and that's the status conference for Brownfield Partners.

Mr. Testa from McCarter & English has been patiently on the phone all day, so I wanted to give him an opportunity to be heard. But just to lay out a foundation, you've heard more about environmental issues today than I think you have in the entire case so far and you'll be hearing --

THE COURT: Not really because since Ms. Leary talked about it early in the 363 hearing, it's been a matter of concern to me.

MR. SMOLINSKY: Your Honor, I think that the discussions have been a lot more successful than you might glean from Mr. Mayer's comments but that has not come easily and it's come with a lot of help from the company's

environmental consultants. We have three consultants.

Initially, Brownfield Partners was retained on a very quick basis prior to the sale in order to do some minimal work in connection with getting to the 363 sale. After that point, and they had a 200,000 dollar cap for that work -- after that point, the -- Brownfield Partners started doing more and more and becoming more integral into the process of developing the budgets for environmental remediation, as well as negotiation to the hopefully agreed upon numbers.

And with that came an increase in cap but along with that, Brownfield Partners revisited what the details of the arrangement was and realized that in order to take on those increased responsibilities, they would have to commit a large portion of their firm to this project which would prevent them from taking on more lucrative assignments. It's a small percentage of their assignments which are on an hourly basis and they came to the debtors and asked for an increase in rates. And ultimately, MLC --

THE COURT: Rates as contrasted to budget?

MR. SMOLINSKY: That's right.

THE COURT: Uh-huh.

MR. SMOLINSKY: And MLC, after discussions with them, agreed as a matter of business judgment to increase their rates in a range from ten dollars an hour to fifty dollars an hour, depending on seniority which would raise the top rate to I

believe about 350 dollars. We thought that that was a reasonable request. We agreed to it. We filed a notice of proposed order which approved not only the increase in the cap to I believe 1.1 million dollars but also an increase in the rates.

We got an informal request for information from the fee examiner. We provided the fee examiner with not only a full description of how the different environmental consultants work, so that he could evaluate the scope of the services but also background as to why the -- if fee increases were appropriate.

We ultimately got the consent of the fee examiner with respect to the scope and they agreed not to object to it but they did want to reserve their rights with respect to the rates until fee application time.

In order to get the matter resolved because we really needed Brownfield Partners fully engaged, we all agreed that we can go forward with and get the order entered but with respect to the rate issue, that we would give Brownfield Partners an opportunity to address that issue sooner than maybe six months down the line when we're fighting in a fee application context to understand whether they're going to get the benefits of their bargain in terms of the work that they're doing.

Unlike the law firms and other professionals that are active every day in the bankruptcy court, Brownfield Partners

rarely, if ever, appears in bankruptcy court and I could understand that when they reach an agreement on a rate structure, that they would receive those rates. And for that reason, I think it was appropriate to give them an opportunity to have a conference on that issue.

We are sensitive to the fact that Brownfield Partners has a thirty-day termination right in their agreement. While I hope and expect that they wouldn't exercise that, I do fully -- I am fully sensitive to the fact that they're a small shop, that they're taking on a very substantive role in this case and that if they reach agreement with the debtors as a matter of business judgment on rates, that they should expect it unless there's an ultimate determination by the fee examiner that for reasonableness standards based on the value of services, that there's an objection to the hours spent, as opposed to the rates charged.

THE COURT: What are the parties recommending to me as to the best time to have that follow-up conference?

MR. SMOLINSKY: Your Honor, we set for today -- I know that we've been here a long time. I will let --

THE COURT: Oh, you mean for me actually to fix the rate?

MR. SMOLINSKY: Well to at least have an understanding of how Your Honor wants to approach it. And I will defer to Mr. Testa to speak on what he would expect.

THE COURT: Well, okay. The question that I am going to ask Mr. Testa and then you and anybody else who wants to be heard on it, Mr. Smolinsky, is there a way under which we can get that firm working to help the debtor both address its issues and to get any messes that need to be cleaned up, cleaned up, as quickly as possible if I can give you a prompt conference thereafter considering all of the things we have on for today?

MR. SMOLINSKY: That would be fine with the debtors, Your Honor, and I don't know if that's an evidentiary hearing or simply a conference to discuss the roles and appropriate rates, certainly in comparison with the other environmental consultants that the company has hired.

THE COURT: Well let me invite Mr. Testa to weigh in on this but I am going to probably need the help more of people in this room rather than Mr. Testa, whether anybody wants me to hold an evidentiary hearing on the issue. So let me get Mr. Testa's thoughts first and then let people scratch their heads in the courtroom and tell me whether they're going to want an evidentiary hearing.

MR. SMOLINSKY: Thank you, Your Honor.

THE COURT: Mr. Testa?

MR. TESTA: Thank you, Your Honor. Jeffrey Testa from McCarter & English. As was very well stated by debtors' counsel, Brownfield reached agreement with the debtor on day

one in this case, like every other professional, they jumped in. Their role has expanded greatly to a project management-type role. While we agreed that the cap should be raised, we're also seeking really just a slight raise in rate. The top rate would be 330 dollars which is still 150 dollars less than some of the other environmental professionals. It's a very small firm and we would like to continue doing work. We really don't think an evidentiary hearing would be necessary. We have an agreement with the debtors who are willing to retain us for the revised rate. The initial retainer order made clear that rates could be increased during the course of the case and if new work came on, really we think we can hopefully get this resolved via a consent or other type of order entered by Your Honor.

And I would just like to also note that we took the fee examiner's recommendations very seriously. We've been on the phone with Ms. Andres a number of times and we agreed to adjourn our fee application on the first interim hearing today to the second because we are really making efforts -- we understand our role, to work out an agreement so Your Honor doesn't have to make a ruling and we can reach agreement with the fee examiner.

So to sum it up, we would like obviously to get this resolved as soon as possible before our next fee app. It's really a slight increase in rate and we would really like the

fee examiner to reexamine this issue, so we can continue our work. As we said, our work has expanded greatly and we are a very small firm that would like to get this resolved before we commit ourselves further.

THE COURT: Does anybody in the courtroom want to weigh in on this? Mr. Williamson?

MR. WILLIAMSON: Your Honor, again I was the skunk or one of the skunks at the garden party here. We were trouble by the increase in rate, not by the increase in scope. Obviously the Court's ruling on the motion makes clear that in hindsight, we can question rates but Brownfield is correct, we have been talking, we'll continue to talk. Speaking only for myself, I don't see a need for an evidentiary hearing.

THE COURT: I will tell you the way I see it, folks but it's not going to be a final, final ruling. I'm going to give you folks a chance to be heard if my approach makes you uncomfortable in any way. I think a need has been shown to increase the scope and I think all agree that Brownfield's would be paid no less than its existing rate but it also appears to me that it's unfair for them to be hanging out too long with uncertainty as to whether they're going to be paid the incremental rate if it turns out that that might be material to them.

So what I want to do is offer you folks a hearing at that sweet spot that allows an interchange in dialogue vis-a-

vis facts, so that the need for a hearing can be obviated but which isn't so far out that the firm is hanging out there not knowing what its compensation is going to be. And I sense that Brownfield's already provided parties in interest with information as to why it thinks its rates make sense but if we ever got to an evidentiary hearing, the way we would be doing that is in accordance with my case management order in which case direct would go in by a declaration or affidavit and then people would have the right to cross if anybody thought they needed it.

Mr. Testa, I think it would be constructive if you provided an explanation as to the rates by means of a declaration that will both give people the information they need and could do double duty in case I ever had to have an evidentiary hearing. Then people could tell me whether they really think there's a need to cross or not.

And that way, I could get your guys under way pronto which I think is in the interest of both the estate, the estate's unsecured creditor community and frankly, the environmental community that is looking for enforcement of environmental laws.

So does anybody feel uncomfortable with that approach? I will give you a chance to argue it ab initio.

MR. TESTA: That's fine, Your Honor. Thank you very much.

THE COURT: I would recommend a hearing in the week to two week range, if you need one.

MR. TESTA: That's fine. We will submit a declaration and hopefully there will be no objections. If there are, we will call chambers to schedule that hearing.

THE COURT: Mr. Smolinsky, I don't know if you're quite frowning but do you have a desire to be heard on this?

MR. SMOLINSKY: I wasn't frowning, Your Honor. Joe Smolinsky. I think my client behind me might have been frowning a little bit because of the expense and time that he sees this taking up. But --

THE COURT: Well I would waive it, the declaration if others are willing to. But one way or another, we've got to make -- get peace in the valley on this issue and you've got to get him to work.

MR. SMOLINSKY: And we will work actively to try to get the fee examiner comfortable with this issue.

THE COURT: Fair enough. Do you think it would be constructive -- I am asking you but I guess I should be asking everybody in the room, to delay the need to submit a declaration if you think that you can reach an agreement without a declaration?

MR. SMOLINSKY: I think you could leave that up to us to work out. We could have an initial call with the examiner and see whether it's likely that it could be resolved without

the need for further declarations.

THE COURT: I think that's a good idea because to tell you the truth, if we make these guys do a declaration, I am going to pay them for it and that's going to come out of the estate and it's kind of like defeating the whole purpose in some ways.

MR. SMOLINSKY: We're painfully aware of that, Your Honor.

THE COURT: Yes, I understand. All right. Well you guys have your legal rights and you have your common sense needs and concerns and hopefully you'll balance those. Okay.

I think that does it for what we're going to do in open court today until I issue my ruling. I'm going to do it in an open courtroom, so anybody who wants to be here will have that opportunity. But I --

MR. RODD: Your Honor?

THE COURT: Yes, just a second, Mr. Testa. Let me finish my thought. But I assume that most of the people in the room may just want to call in.

Mr. Testa, did you have some further thought? Was it Mr. Testa?

MR. TESTA: No, Your Honor, that was not me.

MR. RODD: No, Your Honor, it was me. My name is Jake Rodd. I'm docket number 48925 and docket number 5001.

Will the Court be hearing personal motions today or is

it just for the lawyers and their cases?

THE COURT: Can you tell me your name again because I thought I dealt with that matter a long time ago.

MR. RODD: You did, sir?

THE COURT: Wait. Time out. Is this on the objection to claim or is this on something else?

MR. RODD: This is on the objection to claim.

MR. SMOLINSKY: Your Honor, if I can maybe amplify for everyone's benefit. Mr. Rodd filed a proof of claim. I believe it's a 500,000 dollar proof of claim.

THE COURT: Oh, this is a different one than the one we dealt with before.

MR. SMOLINSKY: Yes, yes.

THE COURT: I'm sorry.

MR. SMOLINSKY: Yes, he filed a response to the ADR motion. He didn't object to the procedures but wanted his claim resolved. We've had several conversations with Mr. Rodd. MLC is working to formulate a settlement offer for his claim and beyond that, I am not sure what's before you today.

THE COURT: Am I correct that you have no motion before me today that would affect his rights in any way?

MR. SMOLINSKY: I don't believe there's anything on today that would affect his rights. That's correct.

THE COURT: Okay. Are you comfortable now, Mr. Rodd?

MR. RODD: Yes, sir, but the thing was, sir, when I

called in and was speaking to him, they told me I was one in 70,000 claims, right? And that it would be years before we settled. And what I was protesting in my initial petition to the Court is that we do this in a timely manner. But however, when I made an offer to Mr. Smolinsky to give me an offer, he could not. So --

THE COURT: Well I feel for you, Mr. Rodd but the problem that I have as a judge is the basis upon which I give you a leg up over the other 70,000 creditors in the case.

MR. RODD: Oh, yes, sir, I am not seeking preferential treatment. No, sir, I was not. But I just wanted you to be aware of the situation, the Court to be aware --

THE COURT: Okay. Well now I am aware and I think Mr. Smolinsky's aware but I am not in a position to order anything today and I am not doing that.

MR. RODD: I understand, sir.

THE COURT: Okay.

MR. RODD: Thank you for your time, sir.

THE COURT: Very well. Okay, folks. We are now adjourned and somebody in my chambers will give you fifteen minutes' notice before a call. Thank you. Have a good day.

MR. SMOLINSKY: Thank you, Your Honor.

MR. WILLIAMSON: Thanks, Judge.

(Proceedings adjourned at 2:54 PM)

I N D E X

RULINGS

	Page	Line
Application of the Official Committee of Unsecured Creditors Of Motors Liquidation Company for Entry of an Order Authorizing the Employment and Retention of Bates White, LLC as the Committee's Consultant on the Valuation of Asbestos Liabilities Granted	8	20
Motion of Debtors for Entry of Order Pursuant to 11 U.S.C. Section 105(a) and General Order M-390 Authorizing Implementation of Alternative Dispute Resolution Procedures, Including Mandatory Mediation Approved	10	8
Debtors' Objection to Proof of Claim No. 65796 Filed by	11	10

Rudolph V. Towns and Motion to Expunge Granted			
Motion of Lisa Gross for a Waiver of the Filing Fee to File Motion Granted	12	8	
Request by Lisa Gross to not Serve the Entire Creditor Community Granted	12	9	
Motion for Relief from Stay filed by Lisa Gross Denied	12	21	
Limited Retention and Employment of the Stuart Maue Firm as Consultant to the Fee Examiner Granted on Temporary Basis	96	22	
Fee Examiner's Adjournment Application Granted	97	24	
Change in Fee Examiner's Role Denied	99	9	

C E R T I F I C A T I O N

I, Dena Page, certify that the foregoing transcript is a true and accurate record of the proceedings.

Dena Page

Digitally signed by Dena Page
DN: cn=Dena Page, c=US
Reason: I am the author of this document
Date: 2010.04.30 15:07:17 -04'00'

Dena Page

Also transcribed by:

Tzipporah Geralnik, AAERT Certified Electronic Transcriber (CET**D-489)

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: April 30, 2010